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THE COUNCIL OF STATE, 1940.
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The President of Ireland

His Powers, Functions
and Duties

BY

Michael McDunphy

BARRISTER-AT-LAW

Secretary to the President



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THE FIRST MEETING OF THE COUNCIL OF STATE.

8th January, 1940.

DR. DOUGLAS HYDE,
President of Ireland.

EAMON DE VALERA, T.D., *Taoiseach.* MICHAEL McDUNPHY, *Secretary to the President.*

SEÁN T. Ó CEALLAIGH, T.D., *Tánaiste.* THE HON. TIMOTHY SULLIVAN, *Chief Justice.*

SENATOR MICHAEL TIERNEY.

THE HON. CONOR A. MAGUIRE,

President of the High Court.

SENATOR SIR JOHN KEANE.

FRANK FAHY, T.D., *Chairman of Dáil Éireann.*

SENATOR DR. ROBERT FARNAN.

SENATOR SEÁN GIBBONS, *Chairman of Seanad Éireann.*

WILLIAM NORTON, T.D.

JAMES M. DILLON, T.D.

GENERAL RICHARD MULCAHY, T.D.

PATRICK LYNCH, K.C., *Attorney General.*

Do'n Doctúir Duóglas de h-Íoe
Céad Uachtarán na h-Éireann
le h-Árd-Urraim

Clarum et Venerabile Nomen

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FOREWORD

WHILE IT is perhaps too early to attempt a comprehensive work on the President of Ireland, whose post was created less than a decade ago, it may not be inopportune at this stage, when the seven-year term of the first holder of the office is drawing to a close, to set down a summary of the powers, functions, duties, rights, privileges and disabilities of the President under the Constitution and of some of the principal laws, and of their operation in practice.

The nature of the subject has made it possible to write in self-contained chapters, although this has entailed a certain amount of overlapping, which I trust will not be found objectionable. While the book has not been designed as a text-book, I have provided references for those who wish to study the subject more fully. Except in a few instances I have not attempted any comparisons with the law or practice in other countries.

I am deeply appreciative of the honour which the President, Dr. Douglas Hyde, has conferred on me in permitting me to dedicate the book to him, and to reproduce Mr. Simon Coleman's painting of the first meeting of the Council of State as frontispiece.

I am greatly indebted to a number of State departments, to the Office of the Attorney-General, and to the Clerks of Dáil Éireann and of Seanad Éireann for their co-operation in the preparation of the book, and to Mr. Justice Gavan Duffy of the High Court for his helpful comments on the text as a whole.

April, 1945.

M. McDUNPHY.

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CHAPTER I

Creation of the Office of President

THE CONSTITUTION OF IRELAND, the text of which is in both Irish and English, was approved by the Oireachtas on 14th June, 1937,¹ was adopted and enacted by the people at a plebiscite on 1st July, 1937, and came into operation on 29th December of that year. It repealed and replaced the Constitution of Saorstát Éireann of 1922.²

A copy, signed by the Taoiseach, the Chief Justice and the Chairman of Dáil Éireann, was enrolled for record in the office of the Registrar of the Supreme Court³ on 18th February, 1938.

In Article 1 of the new Constitution the right of the Irish people to control their own destiny was asserted in these unequivocal words :

The Irish nation hereby affirms its inalienable, indefeasible, sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and tradition.

while Article 5 declared in equally clear terms that

Ireland is a sovereign, independent, democratic state.

As a corollary to the assertion of the sovereign independence of Ireland and of the right of her

¹ Dáil Éireann Debates, 14th June, 1937. Vol. 68. Col. 434.

² Art. 48.

³ Art. 63.

people to choose their own rulers, section 1 of Article 12 declared

There shall be a President of Ireland (*Uachtarán na hÉireann*), hereinafter called the President, who shall take precedence over all other persons in the State and who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.

while section 2 added

The President shall be elected by direct vote of the people.

The post was not filled immediately. Arrangements had to be made for the nomination and election of a President,¹ including the enactment of legislation relating to electoral procedure.² The Constitution, however, fixed a time limit, and stipulated that the first President should enter upon his office not later than one hundred and eighty days after the date of the coming into operation of the Constitution.³

In the meantime it directed

- (a) that the powers and functions of the President should be exercised by a Commission consisting of the Chief Justice, the President of the High Court, and the Chairman of Dáil Éireann, provision being made for substitutes in the event of a vacancy in any of those offices, or the inability of a member of the Commission to act,⁴
- (b) that the Oireachtas, or Parliament, should be complete and capable of functioning, notwithstanding the fact that there was no President,⁵ and

¹ Chap. III.

² Chap. III, pp. 9 and 10.

³ Art. 57.1.

⁴ Art. 57.2, 3°.

⁵ Art. 53.3.

- (c) that Bills passed, or deemed to have been passed, by Dáil Éireann prior to the first assembly of Seanad Éireann, or by both of the Houses of the Oireachtas thereafter, should be signed and promulgated as laws¹ by the Commission referred to.²

The Commission operated for nearly six months. Among the Presidential duties performed by it during that period were a dissolution of Dáil Éireann and the proclamation of a General Election;³ the signature of seventeen public and two private Bills and their promulgation as laws;⁴ the appointment of and the issue of commissions to a number of officers of the Defence Forces,⁵ and an appointment to a temporary judicial post.⁶

The Commission ceased to function on the entry upon office of the first President, Dr. Douglas Hyde, which took place in Dublin Castle on 25th June, 1938.⁷

At the close of that historic ceremony the Taoiseach, Mr. de Valera, addressing the President in Irish, said:

A Uachtaráin oirdheirc—Thar ceann náisiúin na hÉireann ; thar ceann na ndaoine atá beo, iad sin atá ina gcomhnuidhe annseo in Éireann agus an cine Gaedheal thar lear ; thar ceann freisin na nglún a chuaidh rómhainn agus a bhí ag tnúth leis an lá seo a fheiceál ach nach bhfaca é, beannuighim duit. Is tusa anois ár nUachtarán, ár gceann-urra, do thoghamar dár dtoil féin do réir ár ndlighthe féin. Is duit-se is dual an t-ughdarás agus an urraim do thug Gaedhil riamh dá gCeannairí dleathacha féin, ach nár tugadh ar feadh na gcéadta blian dóib siúd a chuirfeadh dligheadh iasachta

¹ Chap. XIV.

² Art. 55.1, 2° and 4°.

³ 27th May, 1938. *Iris Oifigiúil*, 31st May, 1938. See also Chap. XIII.

⁴ Chap. XIV.

⁵ Chap. XXI.

⁶ Chap. XII, p. 44.

⁷ Chap. IV and *Iris Oifigiúil*, 1st July, 1938.

i gceannas ortha. Beannuighmid duit-se mar oighre ar ár bprionnsaí dleathacha féin, agus ar ghlacadh oifige dhuit fáiltighimid roimh dhúnadh na beárnan a bhí ann ón mbriseadh bróin a bhain don náisiún Ghaedhealach i gCionn tSáile.¹

The following is a translation into English :

Mr. President—On behalf of the Irish nation, on behalf of the living, those who dwell at home as well as our kin beyond the seas, on behalf also of the dead generations who longed to see this day but have not seen it, I salute you. You are now our President, our head, freely chosen under our own laws, inheriting the authority and entitled to the respect which the Gaels ever gave to those whom they recognised to be their rightful chiefs, but which for centuries they denied to those whom a foreign law would enforce upon them. In you we greet the successor of our rightful princes, and in your accession to office we hail the closing of the breach that has existed since the undoing of our nation at Kinsale.¹

¹ The Battle of Kinsale, 24th December, 1601.

CHAPTER II

Qualifications for Office

Article 12

THE CONSTITUTION declares that

Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.¹

It further declares that

No person may be excluded from Irish Nationality and citizenship by reason of the sex of such person.²

Taken together, these two provisions mean that every citizen, without distinction of sex, that is to say, every man and woman who possesses these two simple qualifications of citizenship and minimum age is, as a matter of Constitutional right, eligible for election as President of Ireland. Except by an amendment of the Constitution³ neither of these conditions may be waived by statute or otherwise, nor has the Oireachtas or the Government or any other authority power to prescribe or declare that any person who possesses these two qualifications shall be, for any reason whatever, ineligible for that high office.

It is interesting to consider the corresponding provisions of the Constitution of the United States.

¹ Art. 12.4.1°.

² Art. 9.1.3°.

³ Chap. XX.

Part 5 of the first section of Article II of that Constitution declares that :

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

The two conditions stipulated in the Irish Constitution are at the same time a minimum and a maximum ; they cannot be added to or detracted from or modified in any way, except, of course, by an amendment of the Constitution. Those in the United States Constitution are merely a minimum ; other conditions can be and have in fact been added by law.

It will be observed that no person is eligible for election as President of the United States who has not been fourteen years in that country. In Ireland there is no residence qualification.

The statement that every citizen, provided that he or she has reached the requisite age, is eligible for election as President of Ireland, requires to be qualified in one respect. A person who holds, or who has held, office as President, is eligible for re-election to that office once, but only once.¹

The President may not be a member of either House of the Oireachtas,² nor may he hold any other office or position of emolument.³ If a member of either House be elected President he is deemed to

¹ Art. 12.3.2°.

² Art. 12.6.1°.

³ Art. 12.6.3°.

have vacated his seat in that House.¹ This provision operated in the case of the first President, Dr. Douglas Hyde, who was a member of Seanad Éireann when elected as President on 4th May, 1938.²

¹ Art. 12.6.2°.

² *Iris Oifigiúil*, 6th May, 1938.

CHAPTER III

Election of President

Article 12

ARTICLE 12 of the Constitution provides that the President shall be elected by direct vote of the people.¹ His appointment therefore rests on direct popular choice.

The voting is by secret ballot and on the system of proportional representation by means of the single transferable vote.² Proportional representation and secrecy of ballot are features of the Irish electoral system, and obtain in regard to elections to membership of Dáil Éireann³ and of Seanad Éireann.⁴

Every citizen who has the right to vote at an election for members of Dáil Éireann has the right to vote at an election for President.⁵ In other words every citizen, without distinction of sex, who has reached the age of twenty-one years, who is not disqualified by law, and who complies with the provisions of the law relating to the election of members of Dáil Éireann,⁶ has the right to vote at a presidential election. It is interesting to note that while there is no power to debar the eligibility of any citizen, who has reached the age of thirty-five years, to be elected as President,⁷ the legislature can, within the general limits imposed by the Constitution,

¹ Art. 12.2.1°.

² Art. 12.2.3°.

³ Art. 16.1.4° and 16.2.5°.

⁴ Art. 18.5.

⁵ Art. 12.2.2°.

⁶ Art. 16.1.2° and 3°.

⁷ Chap. II, p. 5.

stipulate any qualification it may choose for those who are to form the presidential electorate, so that in certain circumstances a person who is eligible for election as President may not vote at a presidential election.

The first step in the appointment of a President is the nomination of candidates.¹ A former or retiring President may nominate himself for re-election,² provided that he has not already held office for two terms.³

Any other candidate must be nominated by

- (a) not less than twenty persons, each of whom is at the time a member of one of the Houses of the Oireachtas,⁴
or
- (b) the Councils of not less than four administrative Counties (including County Boroughs) as defined by law,⁴

but no such member or Council may subscribe to the nomination of more than one candidate in respect of the same election.⁵

The dissolution of a County Council, or the removal of its members from office, does not impair its constitutional right to nominate or join in the nomination of a candidate for election as President. That right remains vested in the Council.⁶

Where only one candidate is nominated it is not necessary to proceed to a ballot for his election.⁷ He becomes President on the declaration of the presidential returning officer to that effect. The first

¹ Art. 12.4.

² Art. 12.4.4°.

³ Chap. V, p. 15.

⁴ Art. 12.4.2°.

⁵ Art. 12.4.3°.

⁶ Local Government (Nomination of Presidential Candidates) Act, No. 36 of 1937, sec. 1; and Local Government Act, No. 23 of 1941, sec. 54.

⁷ Art. 12.4.5°.

President, Dr. Douglas Hyde, who, at the date of writing, April 1945, is still in office, was elected in this manner on 4th May, 1938.¹

Subject to these general principles, elections for the office of President are regulated by law.² The current law in this regard is the Presidential Elections Act, No. 32 of 1937.³ It is concerned with the machinery of election, and need not be discussed here.

There are definite time limits within which a presidential election may be held. In normal circumstances, where a vacancy arises through the completion of the term of office of an outgoing President, the election which is to determine who is to succeed him must be held not later than the date of expiration of the current term of office, and not earlier than the sixtieth day before that date.⁴ A period of sixty days, or two months, is therefore available for the holding of the election. In ordinary circumstances, the name of the new President would be declared before the close of his predecessor's term of office.

Where a vacancy arises through causes other than termination of office through efflux of time, such as the removal from office of the President, his death, his resignation, or his permanent incapacity, whether occurring before or after the President enters upon his office, an election must be held within sixty days after the occurrence of such an event.⁴

¹ *Iris Oifigiúil*, 6th May, 1938.

² Art. 12.5.

³ Another measure, the Presidential and Local Elections Bill, 1945, was introduced in the Dáil on 23rd March, 1945, but is not yet law.

⁴ Art. 12.3.3°.

CHAPTER IV

Entry upon Office

Article 12.7

THE ELECTION of a President does not automatically endow him with the Presidential powers. The Constitution requires a formal entry upon office, and stipulates both a time limit and a manner of entry.

Where an election of President has taken place in anticipation of the completion and consequent termination of the seven-year term of a President still in office, the newly elected President must enter on office on the day following the expiration of his predecessor's term of office, or as soon as may be thereafter.¹

In every other case, that is, where a vacancy has occurred as a result of

- (a) the removal of the President from office,²
- (b) his death,
- (c) his resignation,³
- (d) his permanent incapacity,⁴

the entry of the new President upon his office must take place as soon as may be after his election.

The Constitution directs that the President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses

¹ Art. 12.7.

² Chap. VIII.

³ Chap. VII.

⁴ Chap. IX.

of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration ¹ :

I láthair Dia na nUile-chumhacht, táimse, ———, dá gheallamhaint agus dá dhearbhadh go sollamanta is go fírinneach bheith im thaca agus im dhídin do Bhunreacht Éireann, agus a dlighthe do chaomhna, mo dhualgais do choimhlíonadh go dílis coinsiasach do réir an Bhunreacht is an dlighidh, agus mo lán-dícheall a dhéanamh ar son leasa is fóghnaimh mhuintir na hÉireann. Dia dom stiúradh agus dom chumhdach.

or, in English :

In the presence of Almighty God I ——— do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.

In prescribing the persons before whom the President must take and subscribe his declaration of office, the Constitution specifically names three classes, viz. :

- (a) Members of both Houses of the Oireachtas,
- (b) Judges of the Supreme Court, and
- (c) Judges of the High Court.

while the remainder are designated in general terms as "other public personages." At the inauguration

¹ Art. 12.8.

of the first President, Dr. Douglas Hyde, on 25th June, 1938,¹ the persons present included, in addition to persons in the three classes named, members of the Diplomatic and Consular Corps, Lord Mayors and Mayors, ex-Ministers of State, Heads of the Civil Service, of the Defence Forces and of the *Gárda Síochána*, and representatives of the Churches, Universities, Learned Societies, Professions, Trade and Commerce.

The prescribed declaration may be taken and subscribed in either Irish or English, as under Article 8, Irish, the national language, is the first official language while English is recognised as a second official language. The text chosen by Dr. Hyde was the Irish one.

The official ceremony of entry is brief to the point of austerity. Apart from the prescribed declaration, Dr. Hyde made no formal statement. Having taken and signed his declaration of office, he said in Irish :

Iarraim ar Dhia grásta agus cumhacht do thabhairt dom chun leasa na h-Éireann do chur ar aghaidh. Iarraim ar Dhia ciall agus críonnacht a thabhairt dom agus neart a thabhairt dom, go gcoimhlíonaidh mé mo dhualgais mar Uachtarán na h-Éireann,

which may be translated freely into English as follows :

I ask God to give me the grace and power to promote the interests of Ireland. I ask God to give me wisdom and prudence and strength so that I may fulfil my duties as President of Ireland.

¹ *Iris Oifigiúil*, 1st July, 1938.

As the entry upon office of a President does not follow immediately on the termination of the appointment of his predecessor, there is always at this stage an interval, short or long, in which there is no President. There is no hiatus, however, as regards the powers, duties, and functions of the office. They devolve automatically on the Presidential Commission designated by Article 14 of the Constitution,¹ and continue to vest in that body until the entry upon office of the new President.

¹ Chap. X.

CHAPTER V

Period of Office

Article 12

THE TERM of office of the President is limited to seven years,¹ and no President may hold office for more than two terms.²

He holds office for seven years from the date upon which he enters upon his office,¹ unless before the expiration of that period he

- (a) dies,
- (b) resigns,³
- (c) is removed from office,⁴ or
- (d) becomes permanently incapacitated.⁵

The termination of office by efflux of time is automatic. No action by the President or by any other authority is necessary to effect it, nor can any action or circumstance postpone it or prevent its happening when the due date arrives.

Article 12 provides that

A person who holds, or who has held, office as President, shall be eligible for re-election to that office once, but only once.²

The restriction to two terms of office is specific. It cannot be altered except by an amendment of the

¹ Art. 12.3.1°.

³ Chap. VII, pp. 20-1.

⁵ Chap. IX, p. 27.

² Art. 12.3.2°.

⁴ Chap. VIII, pp. 22-6.

Constitution and that in turn requires approval by the people at a Referendum.¹

A similar restriction obtained at one time in the United States, but it was based on custom and not on a specific constitutional requirement, and has been departed from in practice.

¹ Chap. XX.

CHAPTER VI

Rights, Privileges and Disabilities

I. PRECEDENCE

Article 12.1

THE CONSTITUTION declares that the President shall take precedence over all other persons in the State.¹ This precedence is absolute. It holds against every person without exception, Irish or non-Irish, whatever his or her status, rank or position.

II. OFFICIAL RESIDENCE

Article 12.11

The Constitution requires that the President shall have an official residence in or near the City of Dublin.² The present Official Residence is Arus an Uachtaráin, formerly the Viceregal Lodge, at one time the seat of the British Viceroys and later of the Governors General. It was built in 1751 and is situated in its own grounds in Phoenix Park, about three miles from the centre of the Capital.

III. SALARY AND ALLOWANCES

Article 12.11

The Constitution directs that the President shall receive such emoluments as may be determined by law,³ and that these may not be diminished during his term of office.⁴ The current law is the "Presidential

¹ Art. 12.1.

² Art. 12.11.2°.

³ Art. 12.11.1°.

⁴ Art. 12.11.3°.

Establishment Act, No. 24 of 1938," which fixes these emoluments at the rate of ten thousand pounds per annum, five thousand pounds being his personal remuneration, the balance being for expenses.¹ Payment is made out of the Central Fund, and it is not subject to annual re-vote.² In addition he receives a sum of three hundred pounds per annum for the replacement of motor cars.

IV PENSION

Act No. 24 of 1938

An ex-President, provided that he has not been removed from office by impeachment,³ is entitled to a pension at the rate of twelve hundred pounds per annum.⁴ It is subject to abatement, however, should he receive any remuneration, personal emolument or allowance payable out of public funds, whether as a member of either House of the Oireachtas or otherwise.⁵ A former President who has been removed from office is ineligible for a Presidential pension.⁶

A pension at the rate of five hundred pounds per annum is payable to the widow of a President who dies in Office, or of an ex-President who was in receipt of or entitled to a Presidential pension.⁶ It is payable until she dies unless she remarries; in such case the pension ceases on her remarriage.⁷ It is

¹ Presidential Establishment Act, No. 24 of 1938, Sec. 1 (1).

² Ibid. Sec. 1 (2).

³ Chap. VIII.

⁴ Act cited Sec. 3.

⁵ Ibid. Sec. 5.

⁶ Ibid. Sec. 4.

⁷ Ibid. Sec. 4 (3).

subject to abatement as in the case of a Presidential pension.¹

The widow of an ex-President who was removed from office is not entitled to a pension.²

V. RESTRICTION ON LEAVING THE STATE

Article 12.9

The President may not leave the State during his term of office save with the consent of the Government.³

VI. OTHER PRIVILEGES AND DISABILITIES

Other factors affecting the President, which are in the nature of privileges or disabilities, are dealt with in previous or subsequent Chapters, viz. :

- (a) He may not be a member of either House of the Oireachtas.

Art. 12.6. Chap. II, p. 6.

- (b) He may not hold any other office or position of emolument.

Art. 12.6. Chap. II, p. 6.

- (c) He is liable to impeachment and removal from office for stated misbehaviour.

Art. 12.10. Chap. VIII.

- (d) He is not answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office, or for any act done or purporting to be done by him in their exercise and performance.

Art. 13.8. Chap. XII, pp. 49-50.

¹ Presidential Establishment Act, No. 24 of 1938, Sec. 5.

² Ibid. Sec. 4.

³ Art. 12.9.

CHAPTER VII

Resignation

Article 12

WHILE THE Constitution recognises the resignation of the President as one of the ways in which his office may become vacant,¹ it is silent as to the manner in which he should resign. His resignation is obviously a unilateral action which is effective from the mere fact of being done. It is clear, however, that it must be something more than a mental decision ; it must be communicated to someone. A verbal communication would, no doubt, be effective, but for purposes of record and subsequent proof it is desirable that it should be committed to writing and signed by the President, and this, it may be assumed, would be the normal procedure.

The fact that the President has resigned must be brought immediately to the notice of the Taoiseach as head of the Government ; of the Chairman of each of the Houses of the Oireachtas, of which the President is a constituent element ; and of the Chief Justice, who with the Chairman of those two Houses constitutes the Commission designated by the Constitution to exercise and perform the powers and functions of the President whenever the office of the President is vacant.²

The communications to these persons are in no sense a tendering of the resignation ; they are notifications

¹ Art. 12.3 and 7 and Art. 14.1.

² Chap. X, pp. 28-31.

of an accomplished fact in regard to which the recipients have no function, save to note the existence of a new condition, and to take such consequential action as lies within their respective provinces, including arrangements for the election of a new President.

No resignation of a President has taken place to date. The first President, Dr. Douglas Hyde, is still in office.

CHAPTER VIII

Impeachment

Article 12.10

THE PRESIDENT may be impeached for "stated misbehaviour."¹ The machinery for this purpose is set out in detail in the Constitution. The main features are as follows :

- (a) the charge shall be preferred by either House of the Oireachtas,²
- (b) a proposal to either House to prefer a charge shall not be entertained unless upon a motion in writing signed by not less than thirty members of that House,³
- (c) no such proposal shall be adopted by the House concerned except on a resolution of that House supported by not less than two-thirds of its total membership,⁴
- (d) on the passing of the resolution, the other House shall investigate the charge or cause the charge to be investigated,⁵
- (e) the President has a right to appear and to be represented at the investigation of the charge,⁶
- (f) if, as a result of the investigation, a resolution be passed, supported by not less than two-thirds of the total membership of the House of the Oireachtas by which the charge was investigated or caused to be investigated, declaring
 - 1. that the charge has been sustained, and

¹ Art. 12.10.1°.

² Art. 12.10.2°.

³ Art. 12.10.3°.

⁴ Art. 12.10.4°.

⁵ Art. 12.10.5°.

⁶ Art. 12.10.6°.

2. that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office

such resolution shall operate to remove the President from office.¹

It will be noted that the Constitution does not define "stated misbehaviour," or specify or in any way limit the nature of the charge to be brought against the President. It provides, however, that in addition to proving the charge, the House responsible for the investigation must also pass a resolution that the misbehaviour, the subject of the charge "was such as to render him unfit to continue in office."

This elasticity leaves it to the wisdom of that House to decide whether the particular charge, if proved, is or is not, in the special circumstances of the case, such as to render the President unfit to continue in office.

The proviso that no proposal for an impeachment may be even considered by a House of the Oireachtas, except on a notice of motion in writing signed by not less than thirty members of that House, ensures that this grave step, affecting the occupant of the high office of President of the State, will not be taken except on a matter which has seriously aroused public opinion.

In order to be passed by the initiating House, the resolution must be supported by not less than two-thirds of its total membership.

The passage of the resolution by the requisite majority in the initiating House must be duly notified

¹ Art. 12.10.7°.

to the other House, who must thereupon "investigate the charge or cause it to be investigated."

The mere passage of a resolution by the initiating House charging the President with stated misbehaviour, has no effect whatever upon his position as President. He continues in office unless and until the investigation has been completed, and the requisite resolution has been duly passed by the House of the Oireachtas responsible for the investigation.

The stipulation that the charge must be made by one House and investigated or caused to be investigated by the other, ensures that the responsibility for impeachment shall be shared by both Houses, as well as securing that the House which has initiated the charge and has, so to speak, constituted itself as prosecutor shall not itself be, or be responsible for, the appointment of the investigating tribunal.

The provision that the other House shall investigate the charge, or cause the charge to be investigated leaves it open to that House either to act itself as the Court of investigation or to refer the charge to an independent tribunal. The Constitution,¹ in referring to this matter speaks of "any court, tribunal or body appointed or designated by either of the Houses of the Oireachtas."

It is difficult to forecast in what cases the investigating House would carry out the enquiry itself and when it would enlist the services of a special tribunal. It is probable that recourse would be had to a tribunal, judicial or otherwise, in any case where legal proof would be required to establish facts which

¹ Art. 13.8.2°.

were in controversy, while if the facts were self-evident and not in issue, the House might prefer to undertake the investigation itself.

The tribunal charged with the investigation, whether consisting of a House of the Oireachtas or of a separate tribunal, would undoubtedly communicate with the President, advising him of the charge made against him, and of his right to appear and to be heard, and of the procedure to be adopted by the tribunal.

The charge having been investigated, whether by the responsible House, or by a separate tribunal, that House must thereupon consider the findings and if satisfied that the case against the President has been proved, take its decision by means of the requisite resolution. That resolution must contain two positive declarations, viz. :

- (a) that the charge against the President had been sustained, and
- (b) that the subject of the charge was such as to render him unfit to continue in office,

and must be supported by not less than two-thirds of the total membership of the House.¹ If either of these two declarations be absent, or if the resolution be not supported by the prescribed number of members, the charge fails and the matter is at an end.

If the resolution contains the requisite declarations, and if it is passed by the necessary majority, it operates automatically to remove the President from office the moment it is passed.¹

¹ Art. 12.10.7°.

Impeachment carries with it no permanent disability as far as eligibility for re-election of President is concerned.¹ A President who has been so removed from office retains his right to nominate himself for a second term, provided, of course, that he has not already served two terms.² The practical value of that right in the circumstances needs no comment here.

A President who has been removed from office is ineligible for a Presidential pension,³ and this disqualification for a pension extends to his widow.⁴

¹ Chap. II, p. 5.

³ Chap. VI, p. 18.

² Chap. III, p. 9.

⁴ Chap. VI, p. 19.

CHAPTER IX

Permanent Incapacity

Article 12

AS MENTIONED in Chapter V,¹ the term of office of a President may come to an end through his permanent incapacity. This must be established to the satisfaction of the Supreme Court consisting of not less than five judges.²

A President's incapacity does not come automatically before the Court ; it has to be specifically referred to it, and the initiative in the matter would, no doubt, devolve on the Taoiseach as Head of the Government. The evidence which would satisfy the Court that the President had become, not only incapacitated, but permanently so, would, of course, be a matter for the Court itself, but presumably the assistance of competent medical authorities, consisting of one or more doctors, would be invoked by the Court as the vital evidence on which they would arrive at a conclusion.

On the pronouncement of the decision of the Court that it was satisfied that the President was permanently incapacitated, the term of office of the President would automatically come to an end.

¹ Chap. V, p. 15.

² 2. Art. 12.3.1°.

CHAPTER X

The Presidential Commission

Article 14

THE OFFICE of Vice-President has no place in the Irish Constitution, nor is there any provision for a personal deputy in any circumstances.

Article 14, however, designates a Commission of three, with specific authority to exercise the powers and carry out the official duties of the President, whenever there is a vacancy in that office, or whenever the President for any reason is unable, or fails, to carry out those duties.

The contingencies in which the Commission are to operate are :¹

- (a) the absence of the President,
- (b) his temporary incapacity,
- (c) his permanent incapacity, established to the satisfaction of the Supreme Court,
- (d) his death,
- (e) his resignation,
- (f) his removal from office,
- (g) his failure to exercise or perform the duties or functions of his office, or any of them,
- (h) a vacancy in the office of President.

The Commission consist of the Chief Justice, who is head of the Judiciary, the Chairman of Dáil Éireann, or House of Representatives, and the Chairman of the Seanad, which is the other House of the

¹ Art. 14.1.

Oireachtas.¹ If the office of Chief Justice is vacant, or on any occasion on which the Chief Justice is unable to act, the President of the High Court, who is the next senior Judge in rank, takes his place as a member of the Commission.² If the office of the Chairman of Dáil Éireann or of the Chairman of Seanad Éireann is vacant, his deputy takes his place.³

The Commission may act by any two of their number, and may act notwithstanding a vacancy in their membership.⁴ The latter situation occurs during a dissolution of Dáil Éireann.

The provisions of the Constitution relating to the exercise of the powers and functions of the President, whether as to nature, extent, manner in which or time limit within which they are to be performed, apply also to the Commission,⁵ except that where the Commission have to operate by reason of the failure of the President to act within a specified time they are directed and authorised to do so "as soon as may be after the expiration of the time so specified."⁶

These provisions would seem ample to cover all reasonable contingencies, but as an extra measure of precaution, the Council of State,⁷ which in all other respects is a purely advisory body, is empowered to make such provisions as to them may seem meet for the exercise and performance of the powers and functions of the President in any contingency not covered by the provisions relating to the Presidential Commission.⁸ The exercise of this authority by the

¹ Art. 14.2.1°.

³ Art. 14.2.3° and 4°.

⁵ Art. 14.5.1°.

⁷ Chap. XI. pp. 32-40.

² Art 14.2.2°.

⁴ Art. 14.3.

⁶ Art. 14.5.2°.

⁸ Art. 14.4.

Council of State, whose composition and functions are discussed in Chapter XI, is unhampered by any directions as to its use. The matter is left entirely in the hands of the Council. The likelihood of this provision being invoked, however, is remote, as the other provisions of the Article are sufficiently wide to meet all likely contingencies.

The Presidential Commission, on the other hand, are of immediate importance, and their existence is essential to ensure the uninterrupted administration of the Presidential office. As members of the Commission are members *ex-officio* the Commission are always in being. Their power in respect of the Presidency comes automatically into operation on the occurrence of any of the contingencies mentioned in paragraph 2. There is no formal entry on office by the Commission, and unlike the President, therefore, takes no declaration of office.

The Secretary to the President is *ex-officio* Secretary to the Presidential Commission.¹

Whenever the powers and functions of the President are exercised and performed by the Commission, the Presidential Seal is in their custody, and may be affixed only to instruments made by the Commission and by their direction.² It must be authenticated by the signatures of at least two members of the Commission and of the Secretary or other officer authorised in that behalf by the Commission.² In the case of documents not under seal the signature of the Secretary or other officer is unnecessary.

Apart from those occasions which might be regarded

¹ Chap. XXV.

² Chap. XXIII, p. 88.

as in the nature of contingencies, there is one situation in which the Commission operate as part of the normal working of the Constitution. As mentioned in Chapter IV,¹ there is always an interval, however short, between the termination of the appointment of a President and the entry upon office of his successor. During that interval the powers, functions and duties of the office devolve on the Commission and remain vested in them until the entry upon office of the new President.

No occasion has yet arisen for the operation of Article 14, but during the six months which elapsed between the coming into operation of the Constitution on the 29th December, 1937, and the entry on office of the first President, Dr. Douglas Hyde, on 25th June, 1938, the powers and functions of his office were exercised by a temporary Commission designated for that purpose.²

¹ Chap. IV, p. 14.

² Chap. I, pp. 2 and 3.

CHAPTER XI

The Council of State

Article 31

THE POWERS and functions conferred on the President by the Constitution may be divided into three main classifications :

- (a) Those which must, as a matter of Constitutional duty, be performed or exercised by him on receipt of an advice, resolution, recommendation, request or other communication from the Taoiseach, the Government, either or both of the Houses of the Oireachtas or other authority,
- (b) Those which may be exercised or performed by him on his own judgment, but only after consultation with the Council of State,
- (c) Those which may be exercised or performed by him in his absolute discretion.

These powers are discussed generally in Chapter XII. The present Chapter deals with those which entail prior consultation with the Council of State. A summary will be found in Appendix I.

The functions of the Council of State, as set out in the Constitution,¹ are :

- (a) To aid and counsel the President on all matters on which he may consult the Council in relation to the exercise and performance by him of such of his powers and functions as are by the Constitution expressed to be

¹ Art. 31.1.

exercisable and performable after consultation with the Council of State, and

- (b) to exercise such other functions as are conferred on the Council by the Constitution.

When operating in the first of these categories, it is a purely advisory body, which meets only when the President summons it, in order that he may consult it on a specific Constitutional matter. In any case where the President is obliged by the Constitution, before coming to a decision, to consult the Council beforehand, he must convene a meeting of that body for that purpose, and every member present at that meeting is entitled to speak, and to be heard by the President.¹

While it is obligatory on the President in these cases to consult the Council, he is not bound to act on its advice. The views and counsel of its members, individually and collectively, are given for his guidance, but have no compelling force. In the last analysis, therefore, a decision or action taken by the President after consultation with the Council of State, is taken by him in his absolute discretion. In practice, however, the advice of the members of the Council, constituted as it is, is bound to have a weighty influence on a President faced with the duty of making a decision on an important constitutional issue.

The President may convene meetings of the Council at such times and places as he wishes, subject, of course, to their being convened for purposes designated by the Constitution.² Two meetings of the Council

¹ Art. 32.

² Art. 31.8.

have taken place since its creation by the Constitution on 29th December, 1937. The first was on 8th January, 1940, and the second on 25th February, 1943, the purpose in each case being to advise the President whether he should refer a particular Bill to the Supreme Court for a decision on the question whether the Bill, or a specified provision thereof, was in any respect repugnant to the Constitution.¹ Both meetings were held in the official Residence of the President, Arus an Uachtaráin.

Every member of the Council is obliged by the Constitution to take and subscribe, at the first meeting of the Council which he attends as a member, a declaration in the following form :²

I láthair Dia na nUilechumheacht táimse, —————, dá gheallamhaint agus dá dhearbhadh go sollamanta agus go firinneach mo dhualgais im chomhalta den Chomhairle Stáit do choimhlíonadh go dílis coinsiasach.

or in English :

In the presence of Almighty God I, —————, do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State.

The prime and main function of the Council of State, as has already been indicated, is purely advisory, but its terms of reference, mentioned earlier in this Chapter, contemplate also functions of a different nature. Article 14 of the Constitution provides

¹ Chap. XVII, pp. 72-73.

² Art. 31.4.

for the exercise of the powers and functions of the President by a Presidential Commission at any time when the office of President is vacant, or the President, for any reason, fails in that duty,¹ but it also visualises a situation in which the machinery provided for that purpose may prove inadequate. In such a contingency, it authorises the Council of State, by a majority of its members, to make such provision as to them may seem meet for the exercise and performance of the powers and functions conferred on the President by or under the Constitution, that is to say, by the Constitution itself or by law.² By "a majority of its members" is doubtless meant a majority of its total membership, and not of those present at a particular meeting.

The functions of the Council of State are conferred, specified and limited by the Constitution itself. They cannot be added to or subtracted from by law, nor may powers conferred on the President by law involve consultation with that body. Any modification or change, whether in regard to its composition, its functions, the matters to which its functions relate, or otherwise, can be effected only by an amendment of the Constitution.³

The Council of State consists of the following members :⁴

- i. As ex-officio members : The Taoiseach, the Tánaiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney-General.

¹ Chap. X, pp. 28-31.

³ Chap. XX.

² Chap. X, pp. 29-30.

⁴ Art. 31.2.

- ii. Every person able and willing to act who has held office as President, Taoiseach, Chief Justice, or President of the Executive Council of Saorstát Éireann.
- iii. Such other person, if any, as may be appointed by the President to be members of the Council.

The members in group i, seven in number, are members ex-officio by reason of their current occupancy of high State office. They are the two senior Ministers of State, the Taoiseach, or Head of the Government, and his deputy, the Tánaiste ; the two senior members of the Judiciary, the Chief Justice and the President of the High Court ; the Chairmen of the two Houses of the Oireachtas, Dáil Éireann and Seanad Éireann ; and the Attorney General, who is the legal adviser to the Government, and Leader of the Irish Bar. The holders of five of the offices named have occupied them since the coming into operation of the Constitution, viz. :

the Taoiseach, Mr. Eamon de Valera ;
the Tánaiste, Mr. Seán T. Ó Ceallaigh ;
the Chief Justice, the Hon. Timothy Sullivan ;
the President of the High Court, the Hon. Conor Maguire ;
and
the Chairman of Dáil Éireann, Mr. Frank Fahy.

Of the post of Chairman of Seanad Éireann there have been two successive holders, viz. :

Senator Seán Gibbons
from 27th April, 1938 to 7th September, 1943, and
Senator Seán Goulding,
from 8th September, 1943 to date.

There have been three occupants of the post of Attorney General, viz. :

Mr. Patrick Lynch, K.C.,
from 30th June, 1938 to 1st March, 1940 ;
Mr. Kevin Haugh, S.C., now Mr. Justice Haugh
of the High Court,
from 2nd March, 1940 to 9th October, 1942 ; and
Mr. Kevin Dixon, S.C.,
from 10th October, 1942 to date.

Membership of the Council of State in group ii is also ex-officio, but in respect of former tenure of office. Subject to his being able and willing to act, it extends to every person who has held any of the following offices :

- (a) President,
- (b) Taoiseach,
- (c) Chief Justice,
- (d) President of the Executive Council of Saorstát Éireann.

At the date of writing, there is only one member of this group, viz. Mr. William T. Cosgrave, who, from 1922 to 1932 occupied the post named in category (d), which was that of Head of the Irish Government prior to the coming into operation of the Constitution.

None of the three other posts in group ii, viz. : President, Taoiseach and Chief Justice is at present represented on the Council. Those of President and Taoiseach were created by the Constitution, and are held by their first occupants, Dr. Douglas Hyde, and Mr. Eamon de Valera. The present Chief Justice,

the Hon. Timothy Sullivan, assumed that post in 1938 on the death of his predecessor, who was its first occupant, and there is consequently no ex-Chief Justice alive at present.

Membership in this group ii is held by the persons concerned during their lifetimes, subject to their being able and willing to act. Disqualification from membership of the Council of State entailed by inability or unwillingness to act is not permanent ; it operates only during the existence of such inability or unwillingness, and with the discontinuance of that condition, membership is automatically resumed.

As regards group iii, the Constitution provides that the President may, at any time, and from time to time, by warrant under his hand and Seal appoint such other persons as, in his absolute discretion, he may think fit, to be members of the Council of State, but not more than seven persons so appointed shall be members of the Council at the same time.¹ The appointment of members in this group is left to his absolute discretion, both as regards personnel and number, subject to the overriding maximum of seven. No qualifications are stipulated. The selection of suitable persons is left to the judgment of the President himself. The importance of the appointments is stressed by the requirement that they must be made under the President's hand and Seal.

The first President, Dr. Douglas Hyde, did not avail himself of this power during the first year of his office. In January, 1940, however, having occasion to consult the Council on a matter arising out of

¹ Art. 31.3.

Article 26 of the Constitution,¹ he appointed six members, each of whom was a member of one of the Houses of the Oireachtas.² Only six out of the authorised maximum of seven appointments were made by him.

The membership of an appointed member is ended by ³

- (a) his death,
- (b) his resignation,
- (c) his permanent incapacity,
- (d) termination of his appointment by the President, or
- (e) the termination of office of the President by whom he was appointed.³

Any member of the Council appointed by the President may resign by placing his resignation in the hands of the President.⁴ The mere act of resignation is sufficient ; it does not require to be accepted by the President, but becomes effective on being placed before him.

The President may, for reasons which to him seem sufficient, by order under his hand and Seal, terminate the appointment of any member of the Council of State appointed by him.⁵ There is no obligation on him to state what these reasons are.

Every appointed member of the Council of State, unless his appointment has been previously terminated through some other cause, holds office as such member until the successor to the President by whom he was

¹ Chap. XVII, p. 72.

³ Art. 31.5.

⁵ Art. 31.7.

² Appendix II, Group iii. p. 95.

⁴ Art. 31.6.

appointed has entered upon his office, whereupon his membership automatically ceases.¹ The object of this provision appears to be to provide against there being a depleted Council of State during a vacancy in the office of President, an important consideration in view of the powers conferred on the Council in relation to that office for use in certain contingencies.²

A complete list of the members of the Council of State as on 1st April, 1945, will be found in Appendix II.

The Secretary to the President is ex-officio Clerk to the Council of State.³

¹ Art. 31.5.

² Chap X, pp. 29-30. and Chap. XI, p. 35.

³ Chap. XXV.

CHAPTER XII

Powers and Functions in General

OF THE three main divisions of State authority the President is associated most closely with that of the Legislature ; to a lesser and more formal extent with that of the Executive, and least of all with that of the Judiciary.

I. LEGISLATIVE FUNCTIONS

The President is one of the three constituent elements of the Oireachtas,¹ or Parliament, and every law requires his signature for its enactment² and must be promulgated by him.³ In addition, he can in certain cases intervene in, or even suspend, the process of legislation in order to prevent the enactment of laws which are repugnant to the Constitution,⁴ or contrary to the wishes of the people,⁵ or to prevent encroachment by Dáil Éireann, the House of Representatives, on the limited legislative powers of the other house, Seanad Éireann.⁶

The following is a list of these important powers, which are discussed in detail in their appropriate chapters :

- (a) Power to refer to a Committee of Privileges, appointed by him for that purpose, an appeal from the Seanad against a certificate by the Chairman of Dáil Éireann that a Bill is a Money Bill, a certificate which drastically

¹ Art. 15.1.2°.

² Art. 13.3.1° and Chap. XIV.

³ Art. 13.3.2° and Chap. XIV.

⁴ Chap. XVII.

⁵ Chap. XVIII.

⁶ Chaps. XV and XVI.

curtails the legislative power of the Seanad in respect of that Bill. Art. 22. Chap. XVI, pp. 65-6.

- (b) Power to decide whether the time available to Seanad Éireann for the consideration of a Bill, certified by the Taoiseach to be urgent and necessary for the preservation of the public peace and security, should be abridged to an extent embodied in a resolution passed by Dáil Éireann.

Art. 24. Chap. XV, pp. 61-3.

- (c) Power to refer a Bill to the Supreme Court for a decision as to whether the measure is in any way repugnant to the Constitution.

Art. 26. Chap. XVII, pp. 67-74.

- (d) Power to withhold his signature to a Bill, if, on representations from a prescribed number of members of both Houses of the Oireachtas, he is satisfied that the Bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained.

Art. 27. Chap. XVIII, pp. 75-8.

In the case of (c) above, viz., reference of a Bill to the Supreme Court for a ruling as to its constitutionality or otherwise, the initiative rests with the President himself. In the others, no action can be taken by him unless and until his intervention is invoked in the manner prescribed by the Constitution. This condition does not in any way detract from the power vested in the President; on the contrary it serves to emphasise the importance attaching to his position as guardian of the rights in respect of which his aid is sought.

The President of himself has no power to veto legislation. He may refuse to sign a Bill only if and when it has been determined by the Supreme Court

that its enactment would be unconstitutional, or by the people that it would be contrary to their will. He may not even delay the enactment of a law except on very specific grounds based, in every case, on a constitutional provision designed to protect the constitutional rights of the people or of their institutions.

II. EXECUTIVE FUNCTIONS

The executive power of the State is required by Article 28 of the Constitution to be exercised by or on the authority of the Government, subject to the provisions of the Constitution.¹ The President is always in close touch with the Government, mainly through personal visits to him by the Taoiseach, who is obliged by the Constitution to keep the President generally informed on matters of domestic and international policy.²

The President, however, is not part of the Executive, nor has he any executive powers independent of the Government or other authority, with certain exceptions which are discussed later in this chapter.

As in the case of the Heads of other democratic countries, a great many of the functions of the President of Ireland are formal in their nature. In their performance he merely translates into action important decisions of the Taoiseach, of the Government, of Dáil Éireann, or of both Houses of the Oireachtas. These decisions, whether conveyed to him in the form of advices, nominations, or resolutions, or otherwise, are constitutional requests which must be complied with as a matter of course.

¹ Art. 28.2.

² Art. 28.5.2°.

Examples of these formal functions are :

- (a) The appointment of the Taoiseach or Head of the Government on the nomination of Dáil Éireann.

Art. 13.1.1°.

- (b) The acceptance of the resignation of the Taoiseach.

Art. 28.9.1°.

- (c) The appointment of other members of the Government on the nomination of the Taoiseach, with the approval of Dáil Éireann.

Art. 13.1.2°.

- (d) The acceptance of the resignation of a member of the Government and his removal from office on the advice of the Taoiseach.

Arts. 13.1.3° and 28.9.

- (e) The Supreme Command of the Defence Forces, exercisable on the advice of the Government.

Art. 13.4 and 5.

- (f) The appointment of Judges on the advice of the Government and their removal from office on resolutions passed by both Houses of the Oireachtas.

Art. 35.1 and 4.

- (g) The summoning and dissolution of Dáil Éireann on the advice of a Taoiseach who commands a majority in that House.

Art. 13.2.

- (h) The appointment of the Comptroller and Auditor General on the nomination of Dáil Éireann and his removal from office on resolutions passed by both Houses of the Oireachtas.

Art. 33.2 and 5.

- (i) The grant, on the advice of the Government, of pardons and commutation and remission of punishment imposed by any Court exercising criminal jurisdiction, the power of commutation and remission in capital cases being reserved to the President acting on that advice.

Art. 13.6.

- (j) The appointment of the Attorney General, the acceptance of his resignation and his removal from office on the recommendation of the Taoiseach.

Art. 30.2 and 5.

- (k) The grant of Commissions to Officers of the Defence Forces on the advice of the Government.

Art. 13.5.2°.

In none of these cases does the President select the appointee or initiate the appointment or other action involved, nor has he any right to refuse to give effect to the duly expressed wish or decision of the prescribed authority, or to delay its operation.

Most of the executive acts of the President are performed by him on the advice of the Government. The direction to that effect is either specific in the relevant articles of the Constitution, or flows from the general principle laid down by Section 9 of Article 13, viz. :

The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

This principle is invariable in the case of functions conferred by law, being governed by Section 11 of the same Article, viz. :

No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.

Apart from these purely formal duties which represent no actual authority on his part, the President is in two cases invested by the Constitution with executive power of a very real nature.

The first of these relates to the right of the Taoiseach to ask for a general election. In normal cases where the Taoiseach commands a majority in the Dáil, the President must, if the Taoiseach so advises, dissolve Dáil Éireann and proclaim a general election.¹ Should the Taoiseach, however, have failed to retain the support of a majority in Dáil Éireann, the President may, in his absolute discretion, refuse to act on that advice,² thereby obliging the Taoiseach to resign,³ and giving an opportunity to the Dáil to nominate a new Taoiseach for appointment by the President.

The second of these important powers is that which enables the President at any time, after consultation with the Council of State, to convene a meeting of either or both of the Houses of the Oireachtas.⁴

Both of these powers, although primarily executive in their nature, are closely related to the formation and functioning of Parliament, and to that extent they belong also to the legislative sphere of authority. They are discussed in more detail in Chapter XIII.

The phrase "in his absolute discretion" used in connection with the first of these powers, viz., the right of the President to refuse a dissolution to a Taoiseach who has failed to retain the support of a majority in Dáil Éireann, stresses the very wide difference between this and the merely formal functions

¹ Art. 13.2.1° and Chap. XIII, p. 51.

² Art. 13.2.2. and Chap. XIII, pp. 51-2.

³ Art. 28.10 and Chap. XIII, p. 51.

⁴ Art. 13.2.3 and Chap. XIII, p. 54.

discussed in the earlier part of this chapter. Here we find the President endowed with an authority entirely his own, independent of the Taoiseach, independent of the Government, independent of the Oireachtas, not answerable even to the Supreme Court, which is the final authority on matters of constitutional validity. The President's power in the matter is absolute ; in its exercise he is governed only by his personal judgment of what is best for the people, and his decision, when made, is final and unchallengeable.

The stipulation in the case of the second of these powers, that the President must first consult with the Council of State, does not in any way detract from the President's right to make his own decision. The advice of that body, however influential, is not binding on the President.¹

Although these powers are drastic, they are in no sense dictatorial. It is true that, the immediate decision in each case rests with the President, but the purpose of that decision is merely to prevent an undesirable use or non-use of powers by the authorities in whom they are normally vested, and, where necessary, to transfer the right of judgment to a higher tribunal, in one case Dáil Éireann, and in the other, either or both of the Houses of the Oireachtas.

III. JUDICIAL FUNCTIONS

The Constitution itself confers no judicial functions on the President. Nor may such functions be conferred on him by law, as the constitutional requirement

¹. Chap. XI, p. 33.

that functions so conferred may be exercised only on the advice of the Government,¹ is incompatible with the principle that all judges shall be independent in the exercise of their judicial functions.² His constitutional relations with the Judiciary are confined to

- (a) his power under Article 35 to appoint Judges on the advice of the Government and to remove them from office upon resolutions passed by Dáil Éireann and Seanad Éireann calling for their removal,
- (b) the purely formal function whereby the declaration of office prescribed for Judges must, in the case of the Chief Justice, be taken and subscribed in the presence of the President,³
- (c) the right of the President to refer Bills to the Supreme Court under Article 26 for a decision as to whether they are in any way repugnant to the Constitution.⁴

IV. TIME LIMITS

For some of the functions conferred on the President by the Constitution definite time limits are prescribed. This rule is confined to his purely legislative functions, and applies to the four important powers referred to on pages 41 and 42 of this Chapter, as well as to his duties under Article 25, in regard to the signature of Bills and their promulgation as laws.⁵ It will be noted that these functions include those performable on his own initiative, and after consultation with the Council of State,⁶ and those which must be exercised by him on receipt of a communication from the Taoiseach,

¹ Art. 13.11.

³ Art. 34.5.

⁵ Chap. XIV, pp. 58-9.

² Art. 35.2.

⁴ Chap. XVII.

⁶ Chap. XI.

or from one or both of the Houses of the Oireachtas, whether subject to consultation with the Council of State,¹ or otherwise ; but not those expressed by the Constitution to be exercisable in the President's absolute discretion.²

Wherever a time limit is specified, it is an essential factor in the action to which it relates, and if for any reason that condition is not strictly complied with, the action itself, even if done, may be invalid, and, if the action is mandatory, there is failure on the part of the President within the meaning of Article 14 of the Constitution.³ The duty of exercising the function thereupon devolves on the Presidential Commission designated by that Article,⁴ the time limit being suspended for that purpose.⁵

V. FREEDOM FROM RESTRAINT

Article 13.8

The President, like every other citizen, is bound by the Constitution and by law, but he occupies a privileged position in respect of the discharge of the duties of his Office. Article 13.8 of the Constitution provides in sub-section 1° that

The President shall not be answerable to either House of the Oireachtas or to any Court for the exercise and performance of the powers and functions of his office, or for any act done or purporting to be done by him in the exercise and performance of these powers and functions

But adds in sub-section 2° :

¹ Chap. XI.

² Chap. XII, pp. 46-7.

³ Art. 14.1.

⁴ Chap. X.

⁵ Chap. X, p. 29.

The behaviour of the President may, however, be brought under review in either of the Houses of the Oireachtas for the purposes of section 10 of Article 12 of this Constitution, or by any court, tribunal or body appointed or designated by either of the Houses of the Oireachtas for the investigation of a charge under section 10 of the said Article.¹

These provisions do not prevent the Press or members of the general public from commenting on the wisdom or unwisdom of the President's actions or decisions, or from criticising him in respect of any aspect of his official behaviour, but they do ensure that he will not be hampered in the discharge of his duties by efforts, actual or potential, to impose a check or control on any of his actions, whether by parliamentary action or by appeal to the Courts, subject, of course to the limitation that his behaviour is not such as to render him liable to impeachment.¹

VI. MESSAGES TO THE OIREACHTAS AND TO THE NATION

Article 13.7°

The President may at any time communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance,² and may at any time address a message to the Nation on any such matter.³

In each case he must consult beforehand with the Council of State,⁴ and the message or address must have received the approval of the Government.⁵

¹ Chap. VIII.

² Art. 13.7.1°.

³ Art. 13.7.2°.

⁴ Art. 13.7.1° and 2°.

⁵ Art. 13.7.3°.

CHAPTER XIII

Summoning and Dissolution of Dáil Éireann

Articles 13 and 18

DAIL ÉIREANN is summoned and dissolved by the President on the advice of the Taoiseach.¹ This is done by proclamation under the Presidential Seal, signed by the President and countersigned by the Taoiseach.

The President, however, may, in his absolute discretion, refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann.² This provision reserves to the President the right to decide whether, in such circumstances, it would be better in the public interest that he should proclaim a general election, or, by refusing to do so, oblige the Taoiseach to resign, thus giving the Dáil an opportunity, if it so desired, of choosing a new head of the Government.³

The Constitution gives no indication as to the evidence which would entitle the President to decide that a Taoiseach had in fact ceased to retain the support of a majority in Dáil Éireann. Nor is there yet available any empirical material which might enlighten the student of Constitutional law on this point, as no case has so far occurred of a refusal by the President to grant a dissolution.

Granted that such a situation has arisen, the

¹ Art. 13.2.1°.

² Art. 13.2.2°.

³ Chap. XII, pp. 46-7.

President has to consider which of the two decisions open to him, to grant or to refuse a dissolution, is likely to be the better for the country. For such a case no rules can be laid down. The responsibility rests entirely with the President. He is not required to consult with any other person or authority, not even with the Council of State, which figures so largely in other important matters.¹ The decision is his own, made entirely on his own judgment, and he is not bound to state his reasons. At the same time it must be assumed that the President would be slow to refuse a dissolution except for very adequate reasons.

This power is unique in the Irish Constitution. It is the only case in which the President has an absolute and unquestionable right to act in direct opposition to a constitutional request from the Head of the Government, to reject an advice which in other matters is equivalent to a direction, which must be complied with as a matter of course.

In normal circumstances, a dissolution of Dáil Éireann precedes a general election, a maximum interval of thirty days being allowed by the Constitution,² so that there is a period in which there is no Dáil. Arising out of the outbreak of war in Europe in September, 1939, however, this arrangement was suspended by an Emergency Act enacted on 27th April, 1943, under Article 28.3.3° of the Constitution.³ That Act provides for the proclamation of a general election by the President, acting on the advice of the

¹ Chap. XI.

² Art. 16.3.2°.

³ General Elections (Emergency Provisions) Act, No. 11 of 1943.

Taoiseach, without a prior dissolution, the outgoing Dáil being dissolved and the new one simultaneously brought into being by a second proclamation, on the completion of the election. This arrangement ensures continuity, but prevents overlapping.

The President's constitutional right, in his absolute discretion, to refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann, is converted by this Emergency Act into a right, in his absolute discretion, to refuse to proclaim a general election on such advice, this being a natural corollary to the reversal of the normal order of the two events of dissolution and election.

In a little over a year, recourse was had to these provisions. On the 9th May, 1944, the Government was defeated in Dáil Éireann on the second stage of the Transport Bill 1944.¹ The following day the Taoiseach, Mr. de Valera, advised the President, in conformity with the Emergency Act, to proclaim a general election, and the President acted on that advice.²

In normal circumstances a general election for Seanad Éireann automatically follows a dissolution of Dáil Éireann, and must take place not later than ninety days after such dissolution.³ The date for the first meeting of the Seanad after the election is fixed by the President on the advice of the Government.⁴

There is no formal dissolution of Seanad Éireann. Every member of that House, unless he previously

¹ *Dáil Éireann Debates*, 9th May, 1944, Vol. 93, No. 6, col. 2467.

² *Iris Oifigiúil*, 12th May, 1944.

³ Art. 18.8.

⁴ Art. 18.8.

dies, resigns or becomes disqualified, continues to hold office until the day before the polling day of the general election for the Seanad next held after his nomination or election.¹ On the lapse of that period the outgoing Seanad ceases to exist.

Under the Emergency Act, the basic event which determines the period within which a general election for the Seanad takes place is altered to the polling day for the general election of Dáil Éireann.

Apart from his power, exercised on the advice of the Taoiseach, to summon the Dáil after a general election, the President may at any time on his own volition, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas,² so that if, at any time, the normal machinery for that purpose is for any reason inoperative, an assembly of either or both of the Houses can be convened by the President himself.

An opening by the President in person of a session of either or both of the Houses of the Oireachtas is not expressly contemplated in the Constitution. He may, however, after consultation with the Council of State, communicate with the Houses of the Oireachtas by address or message on any matter of public importance, but any such message or address must first receive the approval of the Government.³ There is nothing to prevent the President from being present in person in either House, but so far he has not attended any meeting of either.

¹ Art. 18.9.

² Art. 13.2.3° and Chap. XII, pp. 46-7.

³ Art. 13.7.1°.

CHAPTER XIV

Signature, Promulgation and Enrolment of Laws

Article 25

THE SOLE and exclusive power to make laws for the State is vested in the Oireachtas,¹ which consists of the President and two Chambers, an elected House of Representatives, called Dáil Éireann,² and a Senate called Seanad Éireann, which is partly nominated and partly elected.³ The signature of the President is an essential act in the enactment of every law.⁴ Until he has signed it and promulgated it as a law, it has no legislative effect.

Proposals for legislation are introduced in the form of Bills, and with the exception of Money Bills,⁵ the initiation of which is reserved to Dáil Éireann, may be initiated in either of the two Houses.⁶ The President never initiates legislation, nor has he any functions in regard to a Bill unless and until it is presented to him for his signature, after having passed through all the processes of enactment appropriate to the two Houses, or, in the special circumstances provided for in Articles 22⁷ and 24⁸, his intervention is sought at some earlier stage by one of the two Houses.

When a Bill is passed or deemed to have been

¹ Art. 15.2.1°.

² Arts. 15.1.2° and 18.

³ Art. 21.1.1.

⁴ Chap. XVI, pp. 65-6.

⁵ Arts. 15.1.2° and 16.

⁶ Art. 13.3.

⁷ Art. 20.2.

⁸ Chap. XV, pp. 61-3.

passed by both Houses of the Oireachtas, it is presented as soon as may be by the Taoiseach to the President for his signature and for promulgation by him as a law.¹ This presentation is done by formal letter. It contains no advice or request, the Taoiseach's function in the matter being merely that of formal presentation. The identity of its text with that passed or deemed to have been passed by both Houses of the Oireachtas is assured by a certificate inscribed on the first page and signed by the Clerk or Assistant Clerk of the Dáil, who, in addition, has initialled every other page, so that the text as a whole is linked to the certificate.

When the President signs a Bill, thereby converting it into a law, he does so by affixing his signature to the last page, using the following bilingual formulae :

Ar na shighniú dom do réir an Bhunreachtá.
Signed by me in pursuance of the Constitution.

Uachtarán na hÉireann.

Dáta :

Having done so, he initials each of the remaining pages. Finally, the serial number of the Act and the year of its enactment, that is, of its signature by the President, are inscribed on the outside page.

Whenever the functions of the President are exercised by a Presidential Commission under Article 14 of the Constitution,² the signatures of all three or of

¹ Art. 25.1.1°.

² Chap. X.

any two of its members are affixed, the formula of signature being modified accordingly. No occasion has so far arisen for the functioning of that Commission.

The Constitution requires that every Bill signed by the President shall be promulgated by him as a law by the publication by his direction of a notice in the *Iris Oifigiúil*¹ stating that the Bill has become law.² This notice, which is invariably in both Irish and English, is gazetted over the signature of the Secretary to the President, or other officer acting on his behalf, and usually appears in the issue of the *Iris Oifigiúil* next published after the date of signature of the Act.

A Bill may be passed in either or both of the two official languages, Irish and English, and if enacted as a law, must be signed by the President in the corresponding text or texts.³ Up to date all laws under the Constitution have, with one exception, been passed in English only. That exception was the Second Amendment of the Constitution Act, 1942, which was enacted in both Irish and English. Where the President signs the text of a Bill in one language, an official translation of that text must be issued in the other language.⁴

When the President has signed a Bill and promulgated it as a law, the signed Act is returned by him to the Taoiseach, who forwards it to the Chairman of Dáil Éireann, the fact of signature being recorded in the official Journal of each House of the Oireachtas. The signed Act is sent by the Clerk of Dáil Éireann to the Registrar of the Supreme Court

¹ The Official Gazette, published in Dublin.

² Art. 13.3.2° and Art. 25.4.2°.

³ Art. 25.4.3°.

⁴ Art. 25.4.4°.

in order that it may be enrolled in the latter's office for record purposes.¹ The enrolment of an Act is the final stage. It is regarded by the Constitution as an important one, for it declares that the text of any law signed by the President and so enrolled, or where he has signed the texts in both official languages, the texts so enrolled, shall be conclusive evidence of the provisions of such law.¹ In the case of conflict between the texts of a law enrolled in both languages, the text in the national language, Irish, shall prevail.²

The Constitution fixes very definite time limits within which the President must sign a Bill on which the processes of legislation as far as the two Houses of the Oireachtas are concerned have been completed. In normal cases he must sign not earlier than the fifth and not later than the seventh day after the date on which the Bill is presented to him for that purpose.³ These time limits, however, may, in certain circumstances, be varied or altogether abrogated, viz. :

- (a) Where the Government, with the concurrence of the Seanad, requests the President to sign at an earlier date than the fifth day after presentation, the President may comply with that request,⁴
- (b) Where the time for consideration of a Bill by Seanad Éireann has been abridged under Article 24, the President must sign on the day on which the Bill is presented to him for signature,⁵

¹ Art. 25.4.5°.

² Art. 25.4.6°.

³ Art. 25.2.1.

⁴ Art. 25.2.2°.

⁵ Art. 25.3. and Chap. XV.

- (c) A Bill which has been referred by the President to the Supreme Court under Article 26 may not be signed by him pending the pronouncement of the decision of that Court, and, if that decision so justifies, may not be signed at all,¹
- (d) Where a Bill has been the subject of a petition to the President under Article 27, he may defer signature until the will of the people on a particular proposal contained in the Bill has been ascertained, and, in the result, may not sign at all.²

If at any time the President fails through any cause to sign and promulgate a Bill within the time appropriate to the circumstances of the case, the duty of signing and promulgating it thereupon devolves on the Presidential Commission designated by Article 14 of the Constitution.³

The Constitution directs that every Bill shall become and be law as on and from the day on which it is signed by the President, and shall, unless the contrary intention appears, come into operation on the same day.⁴

¹ Art. 26.1.3°, 26.3.1° and Chap. XVII.

² Art. 27.5.1° and Chap. XVIII.

³ Chap. X.

⁴ Art. 25.4.1°.

CHAPTER XV

Legislative Powers of the Seanad

Articles 23 and 24

IN THE enactment of legislation, Dáil Éireann is the authoritative House. The second Chamber, Seanad Éireann, may initiate Bills other than Money Bills,¹ but in the main it is a revising body. In the case of Bills initiated by the Dáil, other than Money Bills, the views of the Seanad are expressed as amendments,² to which the Dáil is not bound to agree;³ in the case of Money Bills they take the form of recommendations,⁴ which the Dáil is equally free to accept or reject.⁵

While the Dáil is at liberty to devote as much time as it may choose to the consideration of a legislative measure, whether initiated by itself or by the other House, the time available to the Seanad is strictly limited.

In the case of a non-Money Bill introduced in the Dáil the Seanad is allowed a period of only ninety days, commencing on the day on which the Bill is first sent to it by the Dáil, or such longer period as may be agreed on by both Houses.⁶ If before the expiration of that time, which is referred to in the Constitution as the "stated period," the Seanad passes and returns the Bill, or returns it with amendments with which the Dáil concurs, the Bill, being an agreed measure is passed by both Houses of the Oireachtas.³

¹ Chap. XVI.

⁴ Art. 21.1.2°.

² Art. 20.1.

⁵ Art. 21.2.1°.

³ Art. 23.1.

⁶ Art. 23.1.

If, however, the Seanad, within the "stated period," rejects the Bill, or passes it with amendments to which the Dáil does not agree, or neither passes nor rejects it, then the Dáil has power to complete the process of enactment without further reference to the Seanad. If, within one hundred and eighty days after the expiration of the stated period, the Dáil so resolves, the Bill is deemed to have been passed by both Houses of the Oireachtas.¹ The period of one hundred and eighty days is a maximum. The Dáil if it so wishes, may pass the requisite resolution at any time after its commencement.

In the case of Money Bills,² the authority of the Seanad is still less. The right to initiate them is reserved to the Dáil;³ the time available to the Seanad is limited to twenty-one days,⁴ and its power is confined to the making of recommendations.⁵ If within that period of twenty-one days a Money Bill is not returned to the Dáil, or is returned with recommendations which the Dáil does not accept, the Bill is deemed, without further action on the part of the Dáil, to have been passed by both Houses of the Oireachtas.⁶

This authority on the part of the Seanad may be further reduced, in respect of both Money Bills and non-Money Bills, if the situation is such as to justify recourse to the powers available under Article 24 to the Government and the Dáil, subject to the concurrence of the President. Where the Government is of opinion that a Bill, other than one containing a proposal to amend the Constitution, is urgent and

¹ Art. 23.1.1°.

⁴ Art. 21.2.1°.

² Chap. XVI.

⁵ Art. 21.1.2°.

³ Art. 21.1.1°.

⁶ Art. 21.2.2°.

immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency whether domestic or international, the Taoiseach, on the passage of the Bill by Dáil Éireann, may so certify by messages in writing addressed to the President and to the Chairman of each House of the Oireachtas.¹

If Dáil Éireann thereupon resolves that the time for consideration of the Bill by the Seanad should be abridged to a specified period the matter then comes before the President for decision,¹ to be made by him after consultation with the Council of State.²

The question to be decided by the President at this stage is primarily whether he should or should not sanction a curtailment of the time available to the Seanad for the consideration of the measure, but he will be aware of the fact that, if the Bill is a non-Money Bill, other consequences of importance will result in the event of his agreeing to the proposal. The Bill itself will be taken out of the ambit of Article 26 of the Constitution,³ so that if and when it is presented to him in due course for his signature and for promulgation by him as a law, he may not refer it to the Supreme Court for a decision as to whether it is in any way repugnant to the Constitution. Nor can it be made the subject of a petition to the President under Article 27, requesting him to decline to sign the Bill in order that the will of the people regarding it may be ascertained.⁴

Should the President, after consultation with the

¹ Art. 24.1.

² Chap. XVII, p. 68.

³ Chap. XI.

⁴ Chap. XVIII, p. 75.

Council of State, concur in the resolution of Dáil Éireann, the time available to the Seanad for consideration of the Bill is abridged accordingly.¹

Before the termination of that abridged period the Seanad, if it intends to take any action on the Bill, must complete such operations as are permitted to it by the Constitution. If its action or inaction within that time is such as does not meet with the approval of Dáil Éireann, the Bill is deemed to have been passed by both Houses of the Oireachtas at the expiration of the abridged period.² It must be signed by the President, and promulgated by him as a law on the day on which it is presented to him for that purpose.³

The law which results from the enactment of such a Bill, however, is of limited duration. It remains in force for ninety days from the date of its signature, and no longer, unless, before the expiration of that time both Houses agree that it shall remain in force for a longer period, and such longer period is specified in resolutions passed by both Houses.⁴

¹ Art. 24.1.

² Art. 24.2.

³ Art. 25.3.

⁴ Art. 24.3.

CHAPTER XVI

Money Bills

Articles 21 and 22

A MONEY BILL is defined by Article 22 of the Constitution¹ as a Bill which contains only provisions dealing with all or any of the following matters, viz.:

- (a) the imposition, repeal, remission, alteration or regulation of taxation ;
- (b) the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges ;
- (c) supply ;
- (d) the appropriation, receipt, custody, issue or audit of account or accounts of public money ;
- (e) the raising or guarantee of any loan or the repayment thereof ;
- (f) matters subordinate and incidental to these matters or any of them.

The expressions “ taxation,” “ public money,” and “ loan,” respectively being exclusive of any taxation raised by local authorities or bodies for local purposes.¹

A Money Bill may be initiated in Dáil Éireann only.²

The duty of deciding whether a Bill is or is not a Money Bill rests with the Chairman of Dáil Éireann, and if any Bill is, in his opinion, a Money Bill he is bound to certify it accordingly.³ That certificate is

¹ Art. 22.1.

² Art. 21.1.

³ Art. 22.2.1°.

of particular concern to the Seanad. It reduces the time available to that House for consideration of the Bill to twenty-one days, and limits its jurisdiction to the making of recommendations, any or all of which the Dáil is free to accept or reject.¹

The certificate of the Chairman of Dáil Éireann is final and conclusive, subject, however, to a right of appeal by the Seanad to the President.²

The Seanad, by a resolution passed at a sitting at which not less than thirty members are present, may request the President to refer the question whether the Bill is or is not a Money Bill to a Committee of Privileges.³

If the President, after consultation with the Council of State, decides not to accede to the request, the certificate stands confirmed.⁴

If, however, he decides to accede to the request, he appoints a Committee of Privileges, again after consultation with the Council of State, and refers the question to it.⁵ The Committee must consist of an equal number of members of Dáil Éireann and of Seanad Éireann with a Judge of the Supreme Court as Chairman, who in the case of an equality of votes, not otherwise, is entitled to vote.⁵

The Committee must report its decision to the President within twenty-one days after the day on which the Bill was sent by the Dáil to the Seanad,⁶ this being the time limit allowed to the latter House for the consideration of the measure as a Money Bill ; and that decision, whether it confirms or reverses

¹ Art. 21.2.

² Art. 22.2.1°.

³ Art. 22.2.2°.

⁴ Art. 22.2.6°.

⁵ Art. 22.2.3° and 4°.

⁶ Art. 22.2.4°.

the certificate of the Chairman of Dáil Éireann, is final and conclusive.¹

If the Committee fails to report within the prescribed time the certificate of the Chairman of Dáil Éireann stands confirmed.²

Up to the present date there has been no appeal to the President by the Seanad under Article 22.

¹ Art. 22.2.5°.

² Art. 22.2.6°.

CHAPTER XVII

Reference of Bills to the Supreme Court

Article 26

ARTICLE 15 of the Constitution directs that :

The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or to any provision thereof.¹

and that

Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.²

In addition to the positive prohibition in the first of these clauses and the equally specific pronouncement in the second, the Constitution provides machinery whereby the President can in certain cases seek and obtain a judicial decision on the constitutional validity of a Bill which has been presented to him for his signature, and, if the decision so justifies, decline to sign the Bill and promulgate it as a law.

These powers are contained in Article 26, and apply to every type of Bill, passed or deemed to have been passed by both Houses of the Oireachtas, except³

(a) a Money Bill,⁴

(b) a Bill expressed to be a Bill containing a proposal to amend the Constitution,⁵ and

¹ Art. 15.4.1°.

² Art. 15.4.2°.

³ Art. 26, Introductory Clause.

⁴ Chap. XVI.

⁵ Chap. XX.

- (c) a Bill the time for the consideration of which by Seanad Éireann has been abridged under Article 24.¹

Subject to these three exceptions, the President may, on his own initiative, after consultation with the Council of State, refer any Bill to the Supreme Court for a decision on the question whether the Bill or any specified provision or provisions thereof, is or are repugnant to the Constitution.²

Every reference of a Bill to the Supreme Court by the President must be made not later than the seventh day after the date on which the Bill is presented to him by the Taoiseach for his signature.³ This period coincides with the outer limit of the time allowed to him for the signature of a Bill in ordinary circumstances, viz., not earlier than the fifth and not later than the seventh day after the date of its presentation to him by the Taoiseach.⁴

When the President has so referred a Bill, he may not sign it until the Court has pronounced its decision.⁵ The Court must pronounce its decision as soon as may be, and in any case not later than sixty days after the date of reference.⁶

Before referring a Bill to the Supreme Court, the President must consult with the Council of State, but important though that body is, it is purely advisory, and he is not bound by any opinion expressed by its members.⁷ The initiative and final decision in the matter of referring a Bill to the Supreme Court,

¹ Chap. XV.

³ Art. 26.1.2°.

⁵ Art. 26.1.3°.

⁷ Chap. XI.

² Art. 26.1.1°.

⁴ Chap. XIV, p. 58.

⁶ Art. 26.2.1°.

therefore, rest entirely with the President. He may, moreover, if he so wishes, exercise this power in respect of every Bill, within the ambit of the Article, which is presented to him for signature. In practice, however, the President does not invoke Article 26 unless there are circumstances, within his knowledge, or brought to his notice, which in his considered opinion would justify the grave step of refusing to sign a Bill until its constitutional validity or otherwise has been judicially determined.

Whenever the President refers a Bill to the Supreme Court he so informs the Taoiseach and the Chairman of each House of the Oireachtas by formal messages under his hand and Seal.

In every case the complete Bill is referred by the President to the Court, but he may seek a decision on the Bill as a whole or on any specific provision or provisions to which he directs attention.¹

Both types of case have in fact occurred. In the case of the Offences against the State Bill, 1940,² which he referred to the Supreme Court on 8th January, 1940, the President asked for a decision on the Bill as a whole, while in the case of the School Attendance Bill, 1942,³ which he referred to the Court on 27th February, 1943, he directed attention to Section 4, and asked for a decision on that alone.

On receipt of the Bill from the President with his request for a decision under Article 26, the Supreme Court, consisting of not less than five judges, must consider the question referred to it, and having heard

¹ Art. 26.1.1°.

² *Iris Oifigiúil*, 16th January, 1940.

³ *Iris Oifigiúil*, 2nd March, 1943.

arguments by or on behalf of the Attorney General and by Counsel assigned by the Court, pronounce its decision in open Court as soon as may be, but in any case not later than sixty days after the date of reference.¹ The hearings of the two cases which have occurred to date have also, as matter of practice, been held in open Court. In addition to being pronounced in open Court, the decision is communicated formally in writing to the President.

Prior to the enactment of the Second Amendment of the Constitution Act, 1941, which became operative on 30th May, 1941, the decision of the majority of the judges on a Bill was for the purposes of the Article the decision of the Court, but where the Court was not unanimous it was permissible for a dissenting judge to pronounce a minority opinion. The only case which occurred during the currency of that proviso was that of the Offences against the State Bill, 1940, and in that case the decision, pronounced by the Chief Justice on behalf of the Court, was the only opinion expressed.

The present position is that

- (a) the decision of the Court shall be pronounced by such one of the judges as the Court shall direct,
- (b) no other opinion, whether assenting or dissenting, shall be pronounced,² and
- (c) the existence of any such other opinion shall not be disclosed.²

If the decision of the Court is that the Bill or any provision of it is unconstitutional, the President must

¹ Art. 26.2.°

² Art. 26.2.2°.

thereupon decline to sign the Bill and promulgate it as a law,¹ and in practice he communicates that decision to the Taoiseach and to the Chairman of each of the Houses of the Oireachtas.

If the decision of the Court is that the Bill, or the provision on which the President has asked for a decision, as the case may be, is not in any respect repugnant to the Constitution, the President in ordinary circumstances immediately signs the Bill and promulgates it as a law.² The signed Act is returned to the Taoiseach, from whom it passes in due course through the Chairman of Dáil Éireann to the Registrar of the Supreme Court for enrolment.³

Although the President's signature to a Bill on which the Supreme Court has not given an adverse decision follows normally as a matter of course, there is one exception to this rule. This occurs when the same Bill has been the subject of a petition addressed to him under Article 27, requesting him to decline to sign the Bill on the ground that it contains a proposal of such national importance that the will of the people thereon ought to be ascertained.⁴ If the President decides to accede to that request, his signature to the Bill is postponed until the question raised by that petition has been determined.

The considerations which move the President to refer a Bill to the Supreme Court are not published. The proceedings of the meeting or meetings of the Council of State at which he consults that body before coming to a decision are private ; the reference to

¹ Art. 26.3.1°.

³ Chap. XIV, pp. 57-8.

² Art. 26.3.3°.

⁴ Chap. XVIII, pp. 77-8.

the Supreme Court is merely a request for a judicial decision on the question submitted to it, and contains no indication of the reason for that request ; and the official gazette and press notices are equally silent as to the President's motive.

An examination of the two cases which have occurred to date, however, is not without interest in this connection. The first of these arose as a result of an opinion expressed by Mr. Justice Gavan Duffy in the High Court on 1st December, 1939, that a certain provision in Part VI of the Offences Against the State Act, No. 13 of 1939, was repugnant to the Constitution.¹ The Government thereupon introduced a Bill entitled Offences Against the State Bill, 1940, the purpose of which was to repeal and replace Part VI of the Act of 1939. It was duly passed by both Houses of the Oireachtas and presented to the President for his signature on 5th January, 1940. The textual changes effected by the Bill were few, but material, and on the 8th January, 1940, after consultation with the Council of State, the President referred the Bill to the Supreme Court. On the 9th February, 1940, the Court pronounced its decision to the effect that the Bill was not repugnant to the Constitution,² and the Bill was accordingly signed by the President and promulgated by him as a law.

The second case was that of the School Attendance Bill, 1942, which was passed by both Houses of the Oireachtas on 18th February, 1943. Section 4 provided that a child should not be deemed to be receiving

¹ *The State (Burke) v. The Governor of Arbour Hill*, 1940, *Irish Reports*, p. 136.

² 1940 *Irish Reports*, p. 470.

suitable education in a manner other than by attending a National, a suitable, or a recognised school, unless such education and the manner in which the child was receiving it were certified by the Minister for Education to be suitable, and specified the provisions which should apply to every such certificate so given. In the course of the passage of the Bill through the Dáil and Seanad it was argued by members of both Houses that this Article was repugnant to the Constitution and in particular to Section 3 of Article 42, and the resulting controversy attracted a certain amount of public attention.

When the Bill was presented to the President for his signature, he decided after consultation with the Council of State to refer the Bill to the Supreme Court for a decision as to whether Section 4 thereof was repugnant to the Constitution or to any provision thereof, and on the 27th February, 1943, the Bill was formally referred to that Court. On 15th April, 1943, the Court decided that Section 4 of the Bill was repugnant to the Constitution¹ and advised the President accordingly. The President thereupon declined to sign the Bill.

The right of the President under Act 26 to seek a judicial decision on the constitutionality of a Bill which has not become law, is distinct from, and independent of, the right vested by the Constitution in the Supreme and High Courts to determine the validity of a law at any time after it has been signed and promulgated by the President.² But that right of the Courts does not extend to any law or any

¹ 1943 *Irish Reports*, p. 334.

² Art. 34.3.2°.

provision of a law where the corresponding Bill or provision thereof has already been pronounced to be constitutional by the Supreme Court, following a reference to that Court by the President under Article 26. A decision by the Supreme Court under that Article, that a Bill or a specified provision thereof is not repugnant to the Constitution, extends to the Act which results from the signature of the Bill, so that the provision or provisions to which that decision relates may not subsequently be questioned or challenged in any court whatever.¹

¹ Art. 34.3.3°.

CHAPTER XVIII

Reference of Bills to the People

Article 27

MENTION HAS been made in Chapter XV of the power possessed by Dáil Éireann to complete the processes of enactment of a Bill, prior to its presentation to the President for signature, without the consent of the Seanad, the Bill, at the expiration of a certain period being deemed to have been passed by both Houses. In the case of Money Bills the operation is automatic,¹ in other cases the passage of a resolution by the Dáil is necessary.²

Where the measure is a Money Bill, the President's signature follows as a matter of course on its being presented to him by the Taoiseach for that purpose. In the case of non-Money Bills, however, Article 27 of the Constitution provides for an appeal to the President to defer his signature pending fulfilment of certain conditions. The right of appeal applies to every type of non-Money Bill except³

- (a) a Bill containing a proposal to amend the Constitution,⁴ and
- (b) a Bill the time for consideration of which by the Seanad has been abridged with the consent of the President under Article 24.⁵

¹ Art. 21.2.2° and Chap. XV, p. 61.

² Art. 23.1.1° and Chap. XV, pp. 60-1.

³ Art. 27, Introductory Clause and Art. 23.1.

⁴ Chap. XX.

⁵ Chap. XV, pp. 61-3.

A majority of the members of the Seanad and not less than one-third of the members of the Dáil may by a joint petition addressed to the President request him to decline to sign and promulgate a Bill to which Article 27 applies, on the ground that it contains a proposal of such national importance that the will of the people thereon ought to be ascertained.¹

The petition must comply with the following conditions :

- (a) it must be in writing, and must be signed by the petitioners, whose signatures must be verified in the manner prescribed by law,²
- (b) it must contain a statement of the particular ground or grounds on which the request is based,³ and
- (c) it must be presented to the President not later than four days after the date on which the Bill is deemed to have been passed by both Houses of the Oireachtas.³

Upon receipt of the petition, the President must consider it forthwith, and must, after consultation with the Council of State, pronounce his decision not later than ten days after the date on which the Bill is deemed to have been passed by both Houses of the Oireachtas.⁴

If the President, after such consultation, decides that the Bill does contain a proposal of such national importance that the will of the people thereon ought to be ascertained, he must so inform the Taoiseach and the Chairman of each House of the Oireachtas

¹ Art. 27.1.

³ Art. 27.3.

² Art. 27.2 and Appendix III, p. 96.

⁴ Art. 27.4.1°.

in writing under his hand and Seal,¹ and decline to sign the Bill and promulgate it as a law,¹ until the proposal shall have been approved either

- (a) by the people at a Referendum within a period of eighteen months from the date of the President's decision,¹ or
- (b) by a resolution of Dáil Éireann passed within the same period after a dissolution and re-assembly of Dáil Éireann.¹

If in due course the proposal is approved in either of the manners prescribed, the Bill must be presented, as soon as may be thereafter, to the President for his signature, and the President must thereupon sign it and promulgate it as a law.²

Should the President, on receipt of the petition, decide, after consultation with the Council of State, that the Bill does not contain a proposal of the requisite national importance, he must so inform the Taoiseach and the Chairman of each House of the Oireachtas in writing under his hand and Seal, and must sign the Bill not later than eleven days after the date on which the Bill is deemed to have been passed by both Houses of the Oireachtas.³

There is one type of case in which there must be a departure from the above procedure, as far as the time limit within which the President's decision on the petition must be pronounced is concerned. Where the same Bill has been or is to be referred by the President to the Supreme Court under Article 26 for a decision as to whether it is in any respect repugnant

¹ Art. 27.5.1.º.

² Art. 27.5.2.º.

³ Art. 27.6.

to the Constitution,¹ he need not consider the petition under Article 27 unless and until the Supreme Court has pronounced its decision.² If that decision is that the Bill or any provision thereof is unconstitutional, the Bill may not become law,³ and the petition under Article 27 calls for no further action.

If the judgment of the Supreme Court is such as would entitle the President to sign the Bill and promulgate it as a law, he must, however, defer doing so until he has dealt with the petition under Article 27, and his decision on the latter need not be pronounced before the expiration of six days after the date of the pronouncement of the decision of the Court.²

When considering the petition at this stage, the President need not be concerned with, or influenced by, the finding of the Court. The fact that the Bill is in no way repugnant to the Constitution has no bearing on the desirability or otherwise of ascertaining the will of the people on any or all of its provisions. The issue in one case is that of constitutional validity ; in the other it is a question whether the measure contains a proposal of such national importance that the people's will thereupon should be obtained.

No case has yet occurred of a petition to the President under Article 27.

¹ Chap. XVII.

² Art. 27.4.2.

³ Art. 26.3.1° and Chap. XVII, p. 7.

CHAPTER XIX

The Referendum

Article 47

THE CONSTITUTION provides for the direct ascertainment of the will of the people by means of a Referendum, and stipulates that certain proposals for legislation must or may be submitted to the people in this manner before being signed by the President and promulgated by him as law.

The first and most important of these are proposals to amend the Constitution. Before being presented to the President for his signature and for promulgation as a law, every such proposal must be submitted by Referendum to the decision of the people.¹ If a majority of the votes cast at the Referendum are cast in favour of its enactment, the proposal to amend the Constitution is held to have been approved by the people.²

The second group embraces Bills which the President, under Article 27, has declined to sign and promulgate as a law, on the ground that they contain proposals of such national importance that the will of the people thereon ought to be ascertained.³ If such a Bill is submitted to a Referendum, it is held to have been vetoed by the people if

(a) a majority of the votes cast at the Referendum have been cast against its enactment into law,⁴ and

¹ Art. 46.2. and Chap. XX.

³ Chap. XVIII.

² Art. 47.1.

⁴ Art. 47.2.1°.

- (b) if the votes so cast against its enactment have amounted to not less than thirty-three and one-third per cent. of the voters on the register.¹

If not so vetoed, the proposal is deemed to have been approved by the people for the purposes of Article 27.²

It will be observed that the bases on which the decision of the people is computed differ for these two groups. In the case of a proposed amendment of the Constitution, positive approval by a majority of those actually voting is essential for its enactment. In the case of a Bill under Article 27, the proposal is deemed to have been approved, unless it has been vetoed by the prescribed proportion of the voters, actual and potential.

Every citizen who has the right to vote at an election for members of Dáil Éireann³ has the right to vote at a Referendum.⁴

Subject to these general principles, the Referendum is regulated by law.⁵ The current law is contained in the Referendum Act, No 8 of 1942.

¹ Art. 47.2.1°.

² Art. 47.2.2°.

³ Art. 16.1.2° and 3°.

⁴ Art. 47.3.

⁵ Art. 47.4.

CHAPTER XX

Amendment of the Constitution

Article 46

WITHIN THE first three years from the date of entry of the first President on office, that is up to and including the 24th June, 1941, it was permissible, under a temporary Article which is now spent,¹ to amend the Constitution by ordinary law, whether by way of variation, addition or repeal, subject to a right of the President, after consultation with the Council of State, to decline to sign the Bill and promulgate it as a law unless and until it had been approved by the people at a Referendum. The Constitution was twice amended under this provision, viz., on 2nd September, 1939, and 30th May, 1941, the resultant Acts being entitled "First Amendment of the Constitution Act, 1939" and "Second Amendment of the Constitution Act, 1941," respectively. In neither case did the President require a reference to the people.

The power of amendment still remains, subject, however, in every case, to approval by the people at a Referendum.² Every proposal for an amendment must be initiated in Dáil Éireann as a Bill,³ every such Bill must be entitled "An Act to amend the Constitution,"⁴ and no such Bill may contain any other proposal.⁵

¹ Art. 51.

² Art. 46, 1 and 5.

³ Art. 46.2.

⁴ Art. 46.3.

⁵ Art. 46.4.

As soon as the Bill has been passed, or deemed to have been passed, by both Houses of the Oireachtas, it must be submitted by Referendum to the decision of the people.¹ The manner in which that decision is to be interpreted is dealt with in Chapter XIX.² When the Bill is presented to the President for his signature, he must be satisfied that all these conditions have been complied with, and in particular that the proposal in the Bill has been duly approved by the people.³ If so satisfied, he must sign the Bill forthwith and promulgate it as a law.³

No recourse to this procedure has yet been necessary. The Constitution has not been amended since 24th June, 1941.

The following provisions of the Constitution which may be invoked in respect of other types of Bills do not, of course, apply to a Bill to amend the Constitution :

- (a) The time for its consideration by the Seanad may not be abridged under Article 24.

Chap. XV, p. 61.

- (b) It may not be referred by the President to the Supreme Court under Article 26 for a decision on the question whether the Bill or any provision or provisions thereof is or are repugnant to the Constitution.

Chap. XVII, p. 67.

- (c) It may not be the subject of a petition to the President requesting him to decline to sign the Bill and promulgate it as a law, on the ground that it contains a proposal of such public importance that the will of the people thereon ought to be ascertained.

Chap. XVIII, p. 75.

¹ Art. 46.2.

² Pp. 79-80.

³ Art. 46.5.

In order that the text may be kept current, the Taoiseach is authorised by the Constitution to arrange, as and when he thinks necessary, for the preparation under his supervision of a text in both of the official languages, Irish and English, of the Constitution then in force, embodying all amendments to date.¹ A copy of every text so prepared, authenticated by the signatures of the Taoiseach and the Chief Justice, and signed by the President, must be enrolled for record in the office of the Registrar of the Supreme Court.² The latest text so signed and enrolled is conclusive evidence of the Constitution at the date of its enrolment, and for that purpose supersedes all previous texts.³ In case of conflict between the texts of any copy enrolled, the text in the national language, Irish, shall prevail.⁴

¹ Art. 25.5.1°.

² Art. 25.5.2°.

³ Art. 25.5.3°.

⁴ Art. 25.5.4°.

CHAPTER XXI

The Defence Forces

Articles 13 and 15

THE RIGHT to raise and maintain military or armed forces is vested exclusively in the Oireachtas,¹ of which the President is one of the three constituent elements.² No such force, other than one raised and maintained by the Oireachtas, may be raised or maintained for any purpose whatsoever.³

The supreme command of the Defence Forces of the State, which comprise the Forces and the Reserve, is vested by the Constitution in the President.⁴ Its exercise is regulated by law,⁵ and is subject to the advice of the Government.⁶

All commissioned officers of the Defence Forces hold their commissions from the President.⁷ The text of the commissions, the form of which is prescribed by statute,⁸ is in the Irish language. They are in every case signed by the President, or by the Presidential Commission,⁹ as the case may be, and sealed with the Presidential Seal ;¹⁰ and are countersigned by the Taoiseach and by the Minister for Defence.

Under powers conferred on him by law, the President, acting on the advice of the Government, may

¹ Art. 15.6.1°.

² Chap. XII, p. 41.

³ Art. 15.6.2°.

⁴ Art. 13.4.

⁵ Art. 13.5.1°.

⁶ Chap. XII, p. 45.

⁷ Art. 13.5.2°.

⁸ Defence Forces Act, No. 41 of 1937, Sec. 5 and First Schedule.

⁹ Chap. X.

¹⁰ Chap. XXIII.

- i. make appointments to the following offices :¹
 - (a) Chief of Staff,
 - (b) Adjutant General,
 - (c) Quartermaster General,
 - (d) Inspector General,
 - (e) Judge Advocate General ;
- ii. appoint any person to commissioned rank or temporary commissioned rank in the Forces or the Reserve,²
- iii. dismiss any officer,³
- iv. retire any officer of the Forces,⁴
- v. accept or refuse to accept the tender by an officer of the resignation of his commission,⁵
- vi. direct that any officer of the Reserve of Officers shall relinquish his commission on the ground of ill-health,⁶
- vii. where during a period of emergency, the Minister for Defence directs that any Officer of the Reserve of Officers shall not be called or recalled to permanent service, direct that such officer shall relinquish his commission,⁷
- viii. where a person is appointed during a period of emergency to temporary commissioned rank in the Forces or in the Reserve, at any time direct that such person shall relinquish his commission.⁸

¹ Defence Forces Act, No. 41 of 1937, Sec. 4.

² Ibid. Secs. 5 and 10.

³ Ibid. Secs. 7 and 10.

⁴ Ibid. Secs. 8 and 10.

⁵ Ibid. Secs. 9 and 10.

⁶ Defence Forces (Temporary Provisions) (No. 2) Act, No. 11 of 1940, Sec. 20.

⁷ Defence Forces (Temporary Provisions) Act, No. 6 of 1941, Sec. 6 (1).

⁸ Ibid. Sec. 6 (2).

CHAPTER XXII

International Relations

Article 29

THE PROVISIONS of the Constitution which deal with international relations are contained in Article 29. It directs that the executive power of the State in or in connection with its external relations shall be exercised by or on the authority of the Government,¹ and since the coming into operation of the Constitution on 29th December, 1937, all such matters have, as theretofore, been administered by the Minister for External Affairs.²

Article 29 confers no executive functions on the President. It provides, however, that no international agreement may be part of the domestic law of the State save as may be determined by the Oireachtas,³ of which the President is a constituent element,⁴ with important powers and responsibilities in respect of legislation.⁵

Should any executive functions in regard to external relations be transferred to or vested in the President by law they must be exercised by him on the advice of the Government.⁶

It is the duty of the Taoiseach to keep the President generally informed on matters of international, as well as domestic, policy.⁷

¹ Art. 29.4.1°.

² Ministers and Secretaries Act, No. 16 of 1924, Sec. 1 (xi).

³ Art. 29.6.

⁴ Chap. XII, p. 41.

⁵ Chap. XII, pp. 41-3.

⁶ Chap. XII, p. 45.

⁷ Art. 28.5.2°.

CHAPTER XXIII

The Presidential Seal

THE CONSTITUTION contains a number of references to the Seal of the President.¹ Provision is also made in certain statutes for the execution of instruments by the President under Seal.

The creation,² use and custody of the Seal are governed by the Presidential Seal Act, No. 37 of 1937. It provides that the Seal shall be officially and judicially noticed ; that every instrument sealed therewith shall, if the Seal purports to be authenticated in accordance with the Act, be received in evidence without further proof,³ and that, in particular, it shall not be necessary to prove any signature affixed to such instrument for the purpose of such authentication, or to prove the office or authority of the person whose signature it purports to be.³

Until the contrary is proved, the Presidential Seal affixed to any instrument is evidence that every, if any, advice, consultation, consent or any other thing, which is, under the Constitution or otherwise by law, a condition precedent to the making of such instrument, was duly given, made or done before the instrument was made by the President, or by the Presidential Commission, as the case may be.⁴

Whenever there is an elected President in office,

¹ Art. 27-5.1° and 6, Art. 31.3 and 7, Art. 33-5.3°, and Art. 34-5.3°.

² Presidential Seal Act, No. 37 of 1937, Sec. 2 (1).

³ Ibid. Sec. 2 (2).

⁴ Ibid. Sec. 2 (3).

and exercising the powers and functions of his office, the Seal is in his custody,¹ and may be affixed only to instruments made by him, and only by his direction,² and must be authenticated by his signature.³

Whenever the powers and functions of the President are exercised and performed by the Presidential Commission,⁴ the Commission have the custody of the Seal,⁵ which may then be affixed only to instruments made by the Commission, and by their direction.⁶ It must be authenticated by the signatures of at least two members of the Commission and of the Secretary or other officer authorised in that behalf by the Commission.⁷

The Seal is applied directly to the fabric of each instrument executed under Seal, and imprints on it a permanent design in relief.

The Seal itself, a reproduction of which is shown in Appendix V, is in the form of a circle approximately six inches in diameter, and embodies the National emblem, the harp, with the name of the State in Irish underneath, and surrounded by a ring of Celtic ornamentation.

The harp is the Irish instrument known as the Brian Ború harp, which is variously attributed to dates ranging from the thirteenth to the fifteenth centuries. The actual harp is in the collection of Trinity College, Dublin, and there is a copy in the National Museum, Dublin. In the Seal it is represented with fifteen strings.

¹ Presidential Seal Act, Sec. 3 (2) (a).

² Presidential Seal Act, Sec. 3 (2) (a).

³ Ibid. Sec. 3 (2) (c).

⁴ Chap. X.

⁵ Act cited Sec. 3 (3) (a).

⁶ Act cited Sec. 3 (3) (b).

⁷ Act cited Sec. 3 (3) (c).

The ornamentation on the Seal is taken, with adaptations, from the inside of the base of the Ardagh Chalice, a thousand-year-old masterpiece of Irish craftsmanship, which is now in the National Museum, Dublin. In her book, *Early Christian Art in Ireland*, published officially in 1911, Miss Margaret Stokes, speaking of this chalice, says that it "combines classic beauty of form with the most exquisite examples of almost every variety of Celtic ornamentation."

CHAPTER XXIV

The Presidential Standard

IN ADDITION to the National Flag, which is the tricolour of green, white and orange,¹ arranged in equal vertical bands, there is a distinctive Presidential Standard which is reserved to the President. It consists of a golden harp on a blue ground, the harp being that embodied in the Presidential Seal.²

It will be inaugurated at a simple ceremony at Árus an Uachtaráin this year.³

The proportions of the Flag and of the Standard are similar, the length or fly in each case being twice the height, or hoist.

The Presidential Standard is flown in conjunction with the National Flag, the latter occupying the place of honour. It flies over Árus an Uachtaráin when the President is in residence, and, when appropriate, at other places where he is present.

¹ Art. 7.

² Chap. XXIII, pp. 88-9, and Appendix V, p. 98.

³ 1945.

CHAPTER XXV

The Secretary to the President

THE SECRETARY to the President, who is also *ex officio* Clerk to the Council of State,¹ is a permanent official attached to the President. He does not retire from office with the President.

The post was created by the Presidential Establishment Act (No. 24 of 1938) with effect as from the coming into operation of the Constitution on 29th December, 1937.² From that date until the entry on office of the first President on 25th June, 1938, the Secretary to the President acted as Secretary to the temporary Presidential Commission designated by Article 54 of the Constitution, a transitory Article which is now spent.³

He acts as Secretary to the permanent Presidential Commission provided for in Article 14 of the Constitution,⁴ whenever that Commission is in operation, and his signature is essential for the authentication of the Presidential Seal when affixed to a document executed by that Commission under Seal.⁵

The Secretary to the President is appointed by the Government, but no appointment may be made while there is an elected President in office, without consultation with the President.⁶

¹ Chap. XI, and Act cited, Sec. 6 (5).

² Act cited, Sec. 6 (1).

³ Chap. I, pp. 2 and 3.

⁴ Chap. X.

⁵ Chap. XXIII, p. 88.

⁶ Presidential Establishment Act, No. 24 of 1938, Sec. 6 (3).

CHAPTER XXVI

The Irish Red Cross Society

THE IRISH RED CROSS SOCIETY was established as from the 1st July, 1939, by an Order made by the Government under Section 1 of the Red Cross Act, No. 32 of 1938.¹ On the 4th September of the same year Dr. Douglas Hyde, President of Ireland, was appointed by the Government to be the President of the Society.²

Under that appointment, his association with the Society was a personal one, but that position was altered by the enactment of the Red Cross Act, No. 20 of 1944, on 28th November of that year, and since that date the President of Ireland has been President of the Society by virtue of his office.³

As President of the Society he nominates the Chairman of the Central Council, who is its chief executive officer, and who holds office for three years.⁴

¹ Irish Red Cross Society Order, 1939, S.R. & O. No. 206.

² *Iris Oifigiúil*, 8th September, 1939.

³ Red Cross Act, No. 20 of 1944, Sec. 1.

⁴ Order cited, Sec. 9.

APPENDIX I

TO CHAPTER XI

POWERS AND FUNCTIONS EXERCISABLE BY THE PRESIDENT AFTER CONSULTATION WITH THE COUNCIL OF STATE

1. Right, at any time to convene a meeting of either or both of the Houses of the Oireachtas.

Art. 13.2.3°. Chap. XII, pp. 46-7 and
Chap. XIII, p. 54.

2. Right to communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance, the message or address in each case being subject to approval by the Government.

Art. 13.7.1°. Chap. XII, p. 50 and
Chap. XIII, p. 54.

3. Right to address a message to the Nation at any time on any matter of national or public importance, the message in each case being subject to approval of the Government.

Art. 13.7.2°. Chap. XII, p. 50.

4. Right, on receipt of a resolution from Seanad Éireann, to refer to a Committee of Privileges, appointed by him for that purpose, the question whether a Bill, which has been certified by the Chairman of Dáil Éireann to be a Money Bill, is or is not in fact a Money Bill.

Art. 22.2. Chap. XII, pp. 41-2 and
Chap. XVI, pp. 65-6.

5. Right to grant or withhold approval to a proposal by Dáil Éireann to abridge the time available to Seanad Éireann for consideration of a Bill, which, in the opinion

of the Government, is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international.

Art. 24. Chap. XV, pp. 61-3.

6. Right to refer certain types of Bills to the Supreme Court for a decision on the question as to whether they are in any respect repugnant to the Constitution.

Art. 26. Chap. XVII.

7. Right, on receipt of a petition from a prescribed number of members of both Houses of the Oireachtas, to decline to sign a Bill, on the ground that it contains a proposal of such national importance that the will of the people thereon ought to be ascertained.

Art. 27. Chap. XVIII.

APPENDIX II

TO CHAPTER XI

PERSONNEL OF THE COUNCIL OF STATE ON 1ST FEBRUARY, 1945

Group i. Ex-officio members :

- | | | | | |
|----------------------------------|---|---|---|----------------------------------|
| 1. Taoiseach | . | . | . | Mr. Eamon de Valera, T.D. |
| 2. Tánaiste | . | . | . | Mr. Seán T. Ó Ceallaigh,
T.D. |
| 3. Chief Justice | . | . | . | Hon. Timothy Sullivan |
| 4. President of the High Court | | | | Hon. Conor Maguire |
| 5. Chairman of Dáil Éireann | | | | Mr. Frank Fahy |
| 6. Chairman of Seanad
Éireann | . | . | . | Senator Seán Goulding |
| 7. Attorney General | . | . | . | Mr. Kevin Dixon, S.C. |

Group ii. Persons who have held certain posts :

- | | | | | |
|---|---|---|---|-------------------------|
| 1. Ex-President | . | . | . | Nil |
| 2. Ex-Taoiseach | . | . | . | Nil |
| 3. Ex-Chief Justice | . | . | . | Nil |
| 4. Ex-President of the
Executive Council | | | | Mr. William T. Cosgrave |

Group iii. Persons appointed by the President, 6th January, 1940¹

- | |
|-----------------------------------|
| 1. Mr. James M. Dillon, T.D. |
| 2. Senator Robert P. Farnan, M.D. |
| 3. Senator Sir John Keane |
| 4. General Richard Mulcahy, T.D. |
| 5. Mr. William Norton, T.D. |
| 6. Professor Michael Tierney. |

¹ *Iris Oifigiúil*, 16th January, 1940.

APPENDIX III

TO CHAPTER XVII

VERIFICATION OF PETITIONS

The following are the main provisions of the Constitution (Verification of Petition) Act, No. 8 of 1944 :

Sections 1 and 2.

Every signature of a member of Dáil Éireann or of Seanad Éireann to a petition presented to the President under Article 27 of the Constitution must be verified by a certificate in a form prescribed by the Act, written on the petition beside or immediately below the signature or signatures to which it relates, and signed by

- (a) The Clerk or Clerk Assistant of Dáil Éireann, in respect of a member of that House, and by the Clerk or Clerk Assistant of Seanad Éireann in respect of a member of that House, or
- (b) a Justice of the District Court, a Commissioner for Oaths, or an officer of the Garda Síochána not below the rank of Superintendent, in respect of a member of either House.

Section 3.

Whenever a petition is presented to the President under Article 27 it shall be lawful for him to accept such verification of a signature thereto as sufficient evidence that

- (a) the signature is that of the person whose signature it purports to be, and
- (b) that such person is a member of Dáil Éireann or of Seanad Éireann as the case may be.

The remainder of the Act deals with corrupt practices in connection with petitions.

APPENDIX IV

STATUTES AND BILLS MENTIONED

<i>Title</i>	<i>Chapter</i>
Constitution (Verification of Petition)	
Act, No. 8 of 1944	XVIII, p. 76
	Appendix III, p. 96
Defence Forces (Temporary Provisions)	
(No. 2) Act, No. 11 of 1940	XXI, p. 85
Defence Forces (Temporary Provisions)	
Act, No. 6 of 1941	XXI, p. 85
Defence Forces Act, No. 41 of 1937	XXI, pp. 84-5
First Amendment of the Constitution	
Act, 1939	XX, p. 81
General Elections (Emergency Provisions) Act, No. 11 of 1943	XIII, pp. 52-4
Local Government Act, No. 23 of 1941	III, p. 9
Local Government (Nomination of Presidential Candidates) Act, No. 36 of 1937	III, p. 9
Ministers and Secretaries Act, No. 16 of 1924	XXII, p. 86
Offences against the State Act, No. 13 of 1939	XVII, p. 72
Offences against the State Bill, 1940	XVII, pp. 69-72
Presidential Elections Act, No. 32 of 1937	III, p. 10
Presidential and Local Elections Bill, 1945	III, p. 10
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APPENDIX V

FACSIMILE OF THE PRESIDENTIAL SEAL



The design, use, and custody of the Presidential Seal, of which the above is a reproduction, are discussed in Chapter XXIII, p. 87.

APPENDIX VI

GLOSSARY OF IRISH WORDS AND PHRASES

1. *Áras an Uachtaráin* . . . The Official Residence of the President.
2. *Ceann Comhairle* . . . Chairman of Dáil Éireann.
3. *Dáil Éireann* . . . The elected House of Representatives.
4. *Éire* . . . Ireland. (Genitive, *Éireann*, of Ireland).
5. *Gárda Síochána* . . . The Irish Police Force.
6. *Iris Oifigiúil* . . . The Official Gazette published by the Stationery Office in Dublin.
7. *Oireachtas* . . . The National Parliament or Legislature, consisting of the President, Dáil Éireann and Seanad Éireann.
8. *Seanad Éireann* . . . The Senate, partly nominated and partly elected.
9. *Tánaiste* . . . The Deputy Prime Minister.
10. *Taoiseach* . . . The Prime Minister or Head of the Government.
11. *T.D.* . . . Teachta Dála, a member of Dáil Éireann.
12. *Uachtarán* . . . President.
13. *Uachtarán na hÉireann* . The President of Ireland.

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